

Exhibit 8

In the Matter of:

CDK Global & Reynolds and Reynolds

September 19, 2019

Robert Brockman

Vol. 2

Condensed Transcript with Word Index



For The Record, Inc.

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110	112
<p>1 FEDERAL TRADE COMMISSION</p> <p>2</p> <p>3 In the Matter of:)</p> <p>4 CDK GLOBAL,)</p> <p>5 a corporation,) File No.</p> <p>6 And) 171-0056</p> <p>7 REYNOLDS AND REYNOLDS,)</p> <p>8 a corporation.</p> <p>9</p> <p>10</p> <p>11 Thursday, September 19, 2019</p> <p>12</p> <p>13 Sheppard, Mullin, Richter & Hampton, LLC</p> <p>14 2099 Pennsylvania Avenue, N.W.</p> <p>15 Washington, D.C. 20006</p> <p>16</p> <p>17 The above-entitled matter came on for</p> <p>18 investigational hearing, pursuant to notice, at 9:05</p> <p>19 a.m., for the testimony of:</p> <p>20</p> <p>21 ROBERT BROCKMAN</p> <p>22</p> <p>23</p> <p>24</p> <p>25 Reported by: Deborah Wehr, RPR</p>	<p>1 I N D E X</p> <p>2</p> <p>3 EXAMINATION BY: PAGE</p> <p>4 Mr. Abrahamsen 113</p> <p>5</p> <p>6</p> <p>7 EXHIBIT DESCRIPTION PAGE</p> <p>8 CX 1143 7/2/14 e-mail 114</p> <p>9 CX 4036 7/14/14 e-mail 125</p> <p>10 CX 4037 9/11/14 e-mail 130</p> <p>11 CX 4273 Settlement agreement 136</p> <p>12 CX 4152 3PA agreement 144</p> <p>13 CX 4153 Reynolds Interface Agreement 144</p> <p>14 CX 4045 Data Exchange Agreement 144</p> <p>15 CX 4176 2/26/15 e-mail 155</p> <p>16 CX 4182 CDK Deal Information 167</p> <p>17 CX 4038 3/19/15 e-mail 180</p> <p>18 CX 4459 11/21/16 e-mail 185</p> <p>19 CX 4420 11/2016 e-mail 188</p> <p>20 CX 4463 8/1/17 e-mail 192</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
111	113
<p>1 APPEARANCES:</p> <p>2</p> <p>3 ON BEHALF OF THE FEDERAL TRADE COMMISSION:</p> <p>4 DANA F. ABRAHAMSEN, ESQUIRE</p> <p>5 WILLIAM LANNING, ESQUIRE</p> <p>6 MICHAEL WILLIAMS, ECONOMIST</p> <p>7 Federal Trade Commission</p> <p>8 600 Pennsylvania Avenue, N.W.</p> <p>9 Washington, D.C. 20580</p> <p>10 (202) 326-3695</p> <p>11 dabrahamsen@ftc.gov</p> <p>12</p> <p>13 ON BEHALF OF REYNOLDS & REYNOLDS:</p> <p>14 MICHAEL P.A. COHEN, ESQUIRE</p> <p>15 AMAR NAIK, ESQUIRE</p> <p>16 Sheppard, Mullin, Richter & Hampton, LLC</p> <p>17 2099 Pennsylvania Avenue, N.W.</p> <p>18 Suite 100</p> <p>19 Washington, D.C. 20006</p> <p>20 (202) 747-1958</p> <p>21 mcohen@sheppardmullin.com</p> <p>22</p> <p>23 ALSO PRESENT:</p> <p>24 SCOTT CHERRY</p> <p>25 JON EMMANUAL</p>	<p>1 P R O C E E D I N G S</p> <p>2 - - - - -</p> <p>3 MR. ABRAHAMSEN: We will resume today our</p> <p>4 examination of Mr. Brockman. We have as counsel for</p> <p>5 the Federal Trade Commission, William Lanning. And</p> <p>6 Mr. Ansaldo, who was with us yesterday, is not present</p> <p>7 today. But otherwise the attendance in the room is the</p> <p>8 same as yesterday. And we are back on the record.</p> <p>9 Whereupon --</p> <p>10 ROBERT BROCKMAN,</p> <p>11 a witness, called for examination, having been</p> <p>12 previously duly sworn, was examined and testified as</p> <p>13 follows:</p> <p>14 EXAMINATION</p> <p>15 BY MR. ABRAHAMSEN:</p> <p>16 Q. Mr. Brockman, good morning.</p> <p>17 A. Good morning.</p> <p>18 Q. I remind you, you are still under oath.</p> <p>19 A. I understand.</p> <p>20 Q. We were talking yesterday about the different</p> <p>21 approaches Reynolds had when it came to its idea about</p> <p>22 security and how it differed from the way the</p> <p>23 laissez-faire attitude that CDK had when it came to</p> <p>24 security. And I wanted to ask whether it would have</p> <p>25 been beneficial for Reynolds' business if CDK changed</p>

114

1 its philosophy. You mentioned yesterday that CDK was
2 costing Reynolds millions of dollars by hacking in to
3 your system, and they were using the fact that you had
4 a closed system as a way to tell dealers that they
5 should switch DMSes over to the CDK DMS. So if CDK
6 changed its business practice and adopted a practice
7 more like Reynolds' practice of not allowing third
8 parties on its system, would that benefit Reynolds?

9 A. I hadn't really thought about that, but
10 certainly they would not be able to declare us fools
11 and idiots. And to that extent, I'm sure it would have
12 been beneficial. They would not have kept throwing the
13 way we were doing things up in our face in sales
14 situations.

15 Q. And it would have vindicated your position on
16 the importance of security for data as well?

17 A. Certainly it would. There's no question.

18 Q. Let me ask you to take a look at a document
19 we've labeled CX 1143 and ask you to take a look at it.
20 CX 1143 has Bates CDK_CID_01535307. It's a two-page
21 exhibit.

22 A. Yes, I find the next-to-the-last paragraph
23 somewhat amusing.

24 Q. I'm sorry, you are talking about the
25 next-to-the-last paragraph of the first page of the

115

1 exhibit?

2 A. Of the first page. It's the one that says, I
3 should point out, we have not been accessing R&R
4 systems for decades, as you said. Our business in
5 access R&R systems came to us through an acquisition.

6 I didn't think that acquiring something
7 automatically put them through the holy water.

8 Q. I appreciate that. His point about the number
9 of years that CDK had been accessing the Reynolds
10 system is a response to your e-mail to him; is that
11 correct?

12 A. Yes, I believe that's correct.

13 Q. So the record is clear, the Exhibit CX 1143 has
14 as the second page of the exhibit the first e-mail in
15 the e-mail and responsive e-mail. And the first e-mail
16 is from Mr. Brockman to Mr. Anenen on June 30, 2014.
17 And the first sentence of your e-mail to Mr. Anenen
18 states, "I think there is some confusion surrounding
19 the issue that I called you about last week."

20 Do you see that?

21 A. Yes.

22 Q. So is the call that you are referring to in the
23 first sentence of the second page of this exhibit the
24 telephone conversation that we discussed yesterday?

25 A. I'm not sure that I recall exactly what was

116

1 discussed yesterday as far as which telephone call, if
2 you could refresh my recollection in that.

3 Q. I believe it's CX 4043.

4 MR. COHEN: Here we go. I have 4043 in front
5 of him as well.

6 THE WITNESS: This is my list of talking points
7 for an eventual telephone conversation.

8 BY MR. ABRAHAMSEN:

9 Q. When you said this, you are referring to
10 CX 4043?

11 A. That's right.

12 Q. Had you had any other telephone calls with
13 Mr. Anenen in this June 30th time period aside from the
14 one call you reference in your e-mail?

15 A. As best as I can recall, that was the only one.
16 Mr. Anenen was a hard person to get ahold of.

17 Q. The response from Mr. Anenen is the first page
18 of CX 1143, and I would like you to take a look at the
19 indented part of the paragraph on the first page of the
20 exhibit and the first hash mark under the sentence that
21 begins with, Based on my assumption, it starts, "For
22 ADP", do you see that sentence?

23 A. I'm sorry, I don't know if I'm looking at the
24 right thing or the right side of it.

25 Q. Yes, CX 1143.

117

1 A. Dash 001?

2 Q. Yes.

3 A. Excuse me, I was on the wrong page. And your
4 question?

5 Q. I was going to direct your attention to the
6 paragraph that's indented, and it's the first paragraph
7 under, "Based on my assumption".

8 A. This is the one that starts off, "For ADP to
9 provide integration to Naked Lime"?

10 Q. Correct. What did you interpret him to mean
11 when he talked in that paragraph about providing
12 integration to Naked Lime, having to go through a set
13 of defined, documented and thoroughly tested processes?

14 A. I interpreted that to mean what he was
15 describing was a 3PA process.

16 Q. And had you talked to him about having your
17 applications go through 3PA prior to receiving this
18 e-mail?

19 A. I had not personally. I would suspect by the
20 context that my people had been talking to his people.

21 Q. But at this time, by the time you read this
22 e-mail, CX 1143, you, at that point, were aware that
23 CDK had a 3PA program?

24 A. Yes, but my people had been talking about it to
25 me.

118

1 **Q. And he talks here about not only for Reynolds**
2 **and Reynolds, but he also makes reference in the first**
3 **sentence for ADP to provide integration to Naked Lime**
4 **or R&R or any third party. What did you interpret him**
5 **to be meaning when he said that for any third party**
6 **they would have go through 3PA?**

7 A. I don't know that I paid a lot of attention to
8 that particular line. What I was more interested in is
9 that they were, as of this date, clearly getting behind
10 the process of the stand down and they were describing
11 things that they needed to have, which I considered to
12 be reasonable as part of the soft landing.

13 **Q. So you thought it was reasonable for him to**
14 **expect you to go through 3PA for your apps?**

15 A. Yes.

16 **Q. And with respect to his reference, and he says**
17 **it twice in this paragraph, in the first line he talks**
18 **about how this has to apply to any third party. And**
19 **then the very last sentence of this paragraph says,**
20 **"Every third party must operate within these**
21 **parameters." Did you understand that sentence to mean**
22 **that CDK was no longer going to adhere to its**
23 **laissez-faire attitude about third parties?**

24 A. Clearly this e-mail represented -- it may not
25 have been a change, but my understanding of where they

119

1 were at from a security standpoint, it was obviously
2 much different than what I had seen before.

3 **Q. And what did you take his sentence in the very**
4 **next indented paragraph, in other words, the one that**
5 **begins after the second hash mark, he's talking again**
6 **about ADP's third-party approval and how they have been**
7 **developed. And the last sentence is what I would like**
8 **to -- the last two sentences are what I would like to**
9 **point your attention to. The second-to-last sentence**
10 **of the paragraph reads, "I am sure you will appreciate**
11 **the need to have R&R follow the same process and meet**
12 **the same standards. I believe that" -- I think the**
13 **word "this" should be here -- that "this is the same**
14 **point you make publicly."**

15 **Did you interpret that to mean that he was**
16 **moving away from his position about -- his**
17 **laissez-faire position about allowing third parties on**
18 **to his system and that he was making reference to the**
19 **fact that this is something that you had made public**
20 **statements about?**

21 A. My interpretation of what this paragraph is all
22 about is that the 3PA system had been around for a
23 while but I had not known about it. And evidently,
24 it's something that they provided to very large
25 customers, large groups, chain dealerships. Auto

120

1 Nation, of course, is their largest customer because
2 it's the biggest chain dealer operator in the whole
3 country.

4 What we are seeing here is a well-developed
5 process, but I had not been aware of that before this.
6 And to see what all he wrote here, actually it's
7 comforting in that the worst situation would be if
8 there were no process at all and they would have to
9 build one from scratch. Looking at this one, you can
10 say, well, this has been running for a while and it's
11 well documented. It looks like it would be a
12 reasonable process to interface using what he's laying
13 out here.

14 **Q. And he's kind of making a point, if I'm**
15 **interpreting this correctly, that almost explaining why**
16 **maybe you haven't heard about it, that you have been**
17 **very public about your position when it comes to third**
18 **parties accessing your DMS, and he's kind of hinting**
19 **that you may not have known this because we haven't**
20 **made it public yet that we are going to take the same**
21 **position that you are going to take on third-party**
22 **access. Did you interpret this e-mail that way?**

23 A. I don't know that I thought that deeply about
24 it. It was mainly a sigh of relief on my part that we
25 weren't going to have to start from scratch to build up

121

1 an interface.

2 **Q. The next paragraph -- the next paragraph on the**
3 **first page of this paragraph that's not indented**
4 **begins -- and this is the one that you referenced**
5 **before I had even asked a question about the exhibit,**
6 **the "I should point out" paragraph, and I would like to**
7 **turn your attention to the last two sentences of that**
8 **paragraph. The second-to-last sentence says, "I would**
9 **be remiss not pointing out that R&R is accessing the**
10 **ADP system through a contract with Authenticom and has**
11 **been doing so for quite some time without an agreement**
12 **from ADP. We need to clean this up as well."**

13 **What did you interpret those two sentences to**
14 **mean?**

15 A. Well, there is no question we had been using
16 Authenticom on a very small scale to provide service
17 reminder follow-up data, addresses and names of
18 customers that own vehicles that sign up to have an oil
19 change or have a 100,000 mile checkup or whatever.

20 As far as what arrangements that Authenticom
21 had, that was beyond our vision. We don't get to see
22 what Authenticom does or was doing at that time. And
23 what he's saying here in so many words is that
24 Authenticom doesn't have a contract with us.
25 Authenticom is acting as a hacker into CDK's systems.

122

1 And he's being fairly gentle about pointing that out
2 because we truly didn't understand what Authenticom was
3 doing, what permissions they had and which ones they
4 didn't.

5 **Q. When he said "we need to clean this up as
6 well", is he suggesting that you need to stop using
7 Authenticom to access the CDK system?**

8 A. That was my interpretation.

9 **Q. And did this suggest to you that CDK was moving
10 away from its laissez-faire attitude about third
11 parties and was going to take a stricter approach in
12 terms of not allowing third parties to hack into its
13 system?**

14 A. I wouldn't say that I perceived that at this
15 point. It wasn't until they started publicly
16 announcing 3PA that I took notice.

17 **Q. Why would he be e-mailing you that you needed
18 to clean this up as well if CDK wasn't interested in
19 stopping the use of third-party integrators on its
20 system?**

21 A. Again, I don't think I thought that deeply.
22 This was -- at this stage of this project, you know, my
23 efforts were pretty much done because I forced the
24 issue with Steve Anenen. And after that I'm backing
25 away because I'm on to whatever the next hill is.

123

1 **Q. This notion that Reynolds had been using
2 Authenticom and that CDK was going to ask you to clean
3 that situation up, was that a topic that you and
4 Mr. Anenen had discussed on the telephone?**

5 A. I'm sorry, I don't recall whether we did or
6 didn't. But it was absolutely clear what he was saying
7 in this letter.

8 **Q. That the third-party integration that had been
9 going on would not be allowed to continue?**

10 A. Yes.

11 **Q. Was that something you talked to Mr. Anenen
12 about, whether CDK was also, in addition to seeing to
13 it that Reynolds stopped using third-party integration
14 on its system that CDK was also going to stop being so
15 laissez-faire about other parties using third-party
16 integration on the CDK system?**

17 A. Again, I'm not perceiving that far deep into
18 this letter. I'm -- again, I think I'm out of this
19 project and I'm on to the next one.

20 **Q. I can't remember how I started my question, so
21 I'm going to maybe ask the same question, but I don't
22 think so.**

23 MR. COHEN: You have asked the same question
24 for about 45 minutes in several different ways, and I
25 haven't objected once and I'm not going to. But the

124

1 answer is not going to change.

2 THE WITNESS: Can I declare a timeout?

3 (A recess was taken.)

4 BY MR. ABRAHAMSEN:

5 **Q. Before the break we were talking about CX 1143
6 and how it had followed a telephone conversation you
7 had had with Mr. Anenen. In that telephone
8 conversation with Mr. Anenen, had he said anything that
9 led you to believe that CDK was no longer going to take
10 a laissez-faire attitude about third-party integration
11 on its DMS system and was going to be adopting a system
12 where they would no longer permit third parties to
13 integrate on its system?**

14 A. We never had any conversation about that. When
15 I finally learned about it, I wasn't surprised because
16 I thought the way they were doing it before was really
17 stupid from a security standpoint. And probably from a
18 general background statement, I consider really
19 everything that CDK does to be inferior. And that's --
20 I have been competing with them now since 1975. So
21 therefore, I don't spend any time, quote, watching what
22 CDK does. I find it humorous that they turn over chief
23 executive officers as often as they do. But other than
24 that, as far as operationally or technically, whatever,
25 I pay no attention to what they do.

125

1 **Q. You mentioned in a prior answer that you had
2 learned about CDK's 3PA program from people who report
3 to you. Who would that have been?**

4 A. Probably Bob Schaefer.

5 **Q. Let me ask you to take a look at a document
6 we've marked as CX 4036. The Exhibit CX 4036 has Bates
7 REYCID0264663, and my understanding is that these are
8 notes that you prepared for yourself to deliver remarks
9 at a sales meeting on July 14, 2014; is that correct?**

10 A. Yes, that's correct.

11 **Q. I wanted to ask you to take a look at the
12 second page of the Exhibit CX 4036-002, and at the
13 bottom of the page there is a paragraph titled
14 Security. Do you see that?**

15 A. Yes.

16 **Q. The second bullet down talks about the early
17 stages of negotiating an agreement, and it says it's a
18 similar agreement. When you say similar agreement, is
19 that a reference to the reference in the first bullet
20 that Reynolds had reached an agreement with
21 Mr. Batista?**

22 A. Yes, the most important part of which is that
23 Phil Batista, since lost in court, was no longer going
24 to be hacking Reynolds' sites and there was going to be
25 an orderly stand down. And that was the way it looked

<p style="text-align: right;">126</p> <p>1 like the agreement with ADP would take place. It would 2 be similar. 3 Q. So you had had a court case going against 4 Mr. Batista, and then ultimately you settled that court 5 case? 6 A. I don't know who brought it in the first place, 7 whether it was us or whether it was Mr. Batista. And 8 the final disposition, whether it was a settlement or 9 whether it was an agreed verdict, I'm not aware. 10 Q. And the reference in the first bullet "reached 11 an agreement where Phil is getting out of the 12 business", is that what you would call a wind down 13 agreement with Mr. Batista? 14 A. Yes. 15 Q. And were the terms basically that he would stop 16 doing integration on Reynolds but he would do so in a 17 way that allowed his clients to continue to do the 18 integration for a period of time until they could move 19 into the RCI program? 20 A. Yeah. It was an orderly stand down would be 21 the way I would characterize it. 22 Q. And Mr. Batista, his company is SIS? 23 A. Yes. 24 Q. The third hash mark down under security on 25 CX 4036-002 states, "ADP seems to be becoming aware of</p>	<p style="text-align: right;">128</p> <p>1 documents, is very organized, very structured, has 2 contracts. The 3PA system provides for ADP to 3 understand exactly what data is being extracted from 4 systems. And I think they probably started to become 5 aware of what was happening from a hacking standpoint 6 of their DMS system. 7 Q. You said in a prior answer that 3PA had been 8 around for a while. It's just that you hadn't heard of 9 it. 10 A. Well, I made that statement based on the fact 11 that it was a pretty complete definition of how it 12 ought to be done. And that's not typically something 13 you start with on day one. So therefore, it was -- I 14 can't tell how mature it was, but it was certainly past 15 starting, for sure. 16 Q. But your comments that you are going to make to 17 your salespeople are sort of -- make it sound to me 18 that because you say ADP seems to be becoming aware of 19 the laws, that there was something recent. 20 A. It was recent knowledge to me. 21 Q. And what was it about the existence of the 3PA 22 program that gave you insight into ADP's thinking about 23 the laws? 24 A. Well, as far as compliance with the law, my 25 belief is that to do it legally, you got to have</p>
<p style="text-align: right;">127</p> <p>1 the laws and liabilities involved." Do you see that? 2 A. This is in the last section titled Security? 3 Q. It's the third hash mark down. 4 A. Yes, I see that. 5 Q. What did you mean by ADP seems to be becoming 6 aware of the laws? 7 A. The very existence, which was in relatively 8 recent news to me, was the fact that the 3PA program 9 existed at all and the fact that they were talking 10 about that. Again, that was new news to me or 11 relatively new. 12 Q. What laws were you referring to? 13 A. The ones -- and I should know the names of 14 them, but the ones that were discussed in the document 15 produced by NADA. 16 Q. And had you talked to Mr. Anenen about the 17 applicability of those laws? 18 A. No. I just had disagreed with the way it was 19 interacting with our systems. 20 Q. But you told your sales force that ADP seems to 21 be becoming aware of the laws. What was your basis for 22 saying that? 23 A. The fact that I had become aware of the 3PA. 24 Q. What did 3PA have to do with laws? 25 A. Well, 3PA is, as we've seen in just prior</p>	<p style="text-align: right;">129</p> <p>1 contracts, you got to have definitions, you got to have 2 an explicit listing of what data fields are going to be 3 removed from the DMS system. And this is -- the fact 4 that there was the existence of the 3PA at all was at 5 variance with what the status quo had been as far as my 6 knowledge is concerned. 7 And talking to the salespeople, the point I'm 8 trying to make is that, well, it kind of looks like 9 that CDK is going to have a formal process, and 10 therefore, they are not going to be able to throw rocks 11 at us for having a formal process, which the sales 12 force are the people that take the stones on this 13 particular subject. That's why I was telling them that 14 it looked like the world is perhaps changing. 15 Q. And you talked in this same sentence about 16 liabilities, that ADP seems to be becoming aware of the 17 laws and liabilities. What liabilities were you 18 referencing? 19 A. Well, the very fact that the 3PA agreement 20 meant to me that they were changing their previous 21 positions of laissez-faire, and that has -- if you 22 describe laissez-faire from a business standpoint, it's 23 treacherous because if there's a breach and you 24 don't -- you are operating without contracts and 25 without definitions of who is doing what, it makes for</p>

130

1 a really messy situation as far as liability is
2 concerned.

3 **Q. Liabilities like the ones we talked about**
4 **yesterday where if a third party sent data into the**
5 **wrong hands, the DMS is the deep pocket?**

6 A. Exactly.

7 **Q. And you state in the next hash mark down, "This**
8 **could put the security wars very much behind us." Is**
9 **this referencing back to the prior bullet about ADP**
10 **becoming aware of the laws and liabilities?**

11 A. I would say that would be correct.

12 **Q. Let me ask you to take a look at CX 4037.**
13 **CX 4037 has Bates REYCID0513201, and it appears to be**
14 **an e-mail from Mr. Schaefer to Mr. Brockman. It's**
15 **dated September 11, 2014.**

16 A. The print on this one is really small. Yes.

17 **Q. The exhibit has a paragraph that contains four**
18 **numbered paragraphs, the longest of which is number 4,**
19 **which starts out "CDK also wants to begin discussing**
20 **the tactical direction for the following." And this**
21 **is -- these are subjects that are being negotiated**
22 **between CDK and Reynolds with regard to what ultimately**
23 **becomes a contract that's signed in February of 2015;**
24 **is that correct?**

25 A. Yes, that's correct.

131

1 **Q. And the paragraph B starts out "RCI pricing,**
2 **minimums, et cetera," and has one little subparagraph**
3 **under it. And there's a reference in the -- well, it's**
4 **the first sentence, but it's a very long sentence and**
5 **there's some dashes, and it's talking about Menu**
6 **Advantage [sic], and then the sentence continues, Their**
7 **contract is not up with SIS until July 2015.**

8 **Was this a reference to CDK using SIS to**
9 **integrate Menu Advantage on Reynolds' DMSes?**

10 A. Yes, that's correct.

11 **Q. And was this integration by SIS subject to the**
12 **wind down agreement, as far as you know?**

13 A. I'm not sure about that. What I think is
14 happening here is that Phil Batista and SIS, Phil is a
15 snake, and it looks to me like that CDK has finally
16 become aware of his true qualities and nature, and they
17 are deciding they want to move to a place where they
18 are not doing business with him anymore, which I'm not
19 surprised.

20 **Q. The sentence goes on and -- I know you didn't**
21 **write this, but I appreciate your interpreting it for**
22 **us. It says that when they go with Reynolds, they'll**
23 **be paying Reynolds a much higher price than what SIS is**
24 **currently charging them. How much higher price would**
25 **CDK pay Reynolds compared to what it was paying SIS?**

132

1 A. I don't know that. We don't have that
2 information. They don't tell us that, but they infer
3 that. But as far as what prices SIS was charging, we
4 don't know.

5 **Q. Well, did you know what price you were paying**
6 **Authenticom to integrate apps on to the CDK system?**

7 A. I was not personally aware of that, it was such
8 a minor piece of business. Reminder cards is not
9 really a huge deal. I think we pay more for the
10 postcard than the rest of it.

11 **Q. Was it generally the case that the third-party**
12 **integrators were charging less than what 3PA and RCI**
13 **were going to be charging for integration?**

14 A. I don't have direct knowledge of that, but I
15 wouldn't be surprised if that was the case.

16 **Q. The next paragraph down, in other words, 4C,**
17 **talks about communication plan and marketing**
18 **announcement, and the first clause of the sentence**
19 **under paragraph i says, "How will the agreement be**
20 **announced to the market."**

21 **What was the issue with regard to announcing**
22 **the agreement to the market?**

23 A. CDK was very, very sensitive -- this was their
24 issue, was very, very sensitive about how all this was
25 going to happen. We are not, you know, marketing kind

133

1 of folks. We are programmers and technical kind of
2 folks, and this was not something that we brought up.
3 It was their issue. And at this point we had not given
4 the slightest thought to that there would even be a
5 marketing program around an announcement, but that's
6 their deal. So we were not opposed to that.

7 **Q. What would the announcement be if Reynolds**
8 **could get its -- what would Reynolds want the public**
9 **announcement to say?**

10 A. We would not want it to say anything as far as
11 we are concerned. We would be just as happy if it
12 didn't exist.

13 **Q. Is this something you discussed with**
14 **Mr. Schaefer? He's writing you this e-mail that**
15 **contains this sentence.**

16 A. I would say probably we did, and probably I
17 would have communicated exactly what I have
18 communicated to you. We are not spinmeisters.

19 **Q. The impression I get from having read documents**
20 **in this matter is that Mr. Schaefer thought that a**
21 **public announcement was very important to you. Do you**
22 **know why we would see that in the documents given what**
23 **you have stated about the lack of enthusiasm for a**
24 **public announcement that you are testifying about?**

25 A. Well, I'm sure I would have talked to Bob

134

1 Schaefer about this issue. But again, a joint
2 marketing announcement with CDK is not something I get
3 all, you know, wet and tingly about.

4 **Q. The notion that there would be an announcement**
5 **that CDK was no longer being agnostic about third**
6 **parties integrating on its platform would seem to be**
7 **beneficial to Reynolds in the sense that it would be**
8 **public acknowledgment that they were no longer going to**
9 **be throwing rocks at you for your stance on security.**

10 A. I would think that that would be the furthest
11 thing from their mind because they are the ones that
12 want to do it, which means they are going to want it to
13 be favorable to them. And anything that's favorable to
14 them is unfavorable to us. Anything that's favorable
15 to us would be unfavorable to them.

16 **Q. Well, what would be favorable to you in terms**
17 **of an announcement?**

18 A. Nothing. No announcement. That would be our
19 preference.

20 **Q. You wouldn't want an announcement that CDK was**
21 **going to stop coming into your system unauthorized?**

22 A. I don't think that there was any way in the
23 world that CDK would admit that in a marketing
24 announcement. I mean, it would be like a public
25 confession that they were hackers and had been hackers

135

1 for years. I mean, there's no way in the world they
2 would have agreed to let that be any part of a press
3 announcement.

4 **Q. I have noticed from reading the final agreement**
5 **that it says that both companies will agree on press**
6 **releases. Was that something Reynolds wanted the**
7 **agreement to say or was that --**

8 A. Well, what it is, it's a tit for tat. They
9 would want it to say that they could agree and approve
10 it, and we would say, no, it's got to be joint which
11 means if we didn't like it, it would not happen. It's
12 one of those kind of situations where you got two
13 parties and it has to be unanimous consent or nothing
14 happens.

15 **Q. Was that a provision that Reynolds felt**
16 **strongly about having in the agreement?**

17 A. Certainly I would have thought so. I'm not
18 aware exactly how it was handled in the final
19 agreement, but I would hope that our legal department
20 would be diligent enough to not give CDK a one-sided
21 ability to approve anything.

22 **Q. Is there anything that you could have said to**
23 **Mr. Schaefer that would have given him the impression**
24 **that you were strongly in favor of a public**
25 **announcement about the agreement with CDK?**

136

1 A. I don't think so, but probably at this point
2 I'm not far enough along in thinking about how the
3 whole thing is going to wind down because again, as I
4 have said before, I was around a lot in the beginning.
5 There was a pile on my desk in the beginning, but once
6 it got past the point there wasn't a pile on my desk
7 anymore, I got other piles to work on. At this point
8 it's in the later stage of the whole situation.

9 **Q. Right, but early on in the process is there**
10 **anything you could have said to Mr. Schaefer that would**
11 **have given him the impression that Reynolds wanted to**
12 **be having a public statement about the agreement with**
13 **CDK?**

14 A. Well, I think that there's -- Bob Schaefer
15 feels much more strongly about that than even I do.
16 And quite possibly we might have had a conversation,
17 but when it comes down to the final thing, CDK wanted
18 so much means that automatically it's good for them and
19 it's not good for us when you really in the cold, clear
20 light of day and you think about it. But prior to the
21 cold, clear light of day, it's possible I have had
22 conversations with -- and we thought that it might have
23 been a good idea. But when you really think about it,
24 it's not.

25 **Q. Let me ask you to take a look at CX 4273.**

137

1 **CX 4273 has Bates REYCID0675646. It's entitled**
2 **Settlement Agreement, and the subtitle is The Reynolds**
3 **& Reynolds Company versus Superior Integrated**
4 **Solutions, Inc., and then it gives the court that the**
5 **settlement is in front of.**

6 A. (Reviewing document.)

7 **Q. Mr. Brockman, the document, the settlement**
8 **agreement that I have shown you at CX 4273 on page 007**
9 **of the document, it indicates that it was agreed to on**
10 **the 5th day of March 2014. And I guess my question is,**
11 **is the settlement agreement the agreement you were**
12 **referring to in CX 4036, which was your statement to**
13 **the sales executives on July 14, 2014?**

14 A. Yes, I believe that's the case.

15 **Q. And you had mentioned in a prior answer that**
16 **Mr. Batista ran a company called SIS. And just for the**
17 **record, SIS is the acronym for Superior Integrated**
18 **Solutions, Inc.; is that correct?**

19 A. Correct.

20 **Q. What exactly was SIS doing with regard to its**
21 **interactions with the Reynolds system?**

22 A. It was one of the Japanese manufacturers, I
23 think it was Subaru, had plans for building what I
24 would call a wrapper around the DMS system so that the
25 user interfaces would be exactly like Subaru wanted.

138

1 It would be Subaru-specific. And what SIS had agreed
2 to do involved really getting into our system in much
3 greater detail than anybody else had ever attempted.
4 And this settlement basically we thought we killed the
5 snake here. Unfortunately, we've not killed the snake.

6 Next time around Phil Batista got really,
7 really clever, because he was banned from the RCI
8 system forever because -- as part of this settlement.
9 But I mean, he created an absolute fraud. He went out
10 and had another company created that achieved RCI
11 status and then he used them to collect all the data as
12 opposed to him doing it directly in contravention of
13 what he agreed to here and started selling an interface
14 for a product called Darwin, which we touched on, I
15 think, maybe perhaps the first day.

16 And what Darwin is, is a system that competes
17 in a way against DocuPad. What it does is it handles
18 presentation of products, aftersale products to the
19 consumers. And we mentioned the fact that its major
20 drawback is it can't recompute the payments based upon
21 what's either bought or decided not to buy as part of
22 the aftersale process, extended warranties, all that
23 manner of stuff.

24 And wildly enough, he had gotten some fairly
25 large Reynolds accounts to buy Darwin. And we were

139

1 then our rights -- I mean, he clearly violated
2 everything in the book, but we couldn't shut him down
3 because of the nature of the customers that he already
4 had, which were also our customers. Had to shut the
5 whole thing down. So we entered into a new stand down
6 agreement, and I think it's coming up sometime early
7 next year where he stands down once again. It's a
8 miserable deal, and I hated to settle with him, but
9 from a business standpoint, we were just compelled to.

10 **Q. You didn't want to settle with him because that**
11 **would mean he would get the benefit of the wind down**
12 **period; is that correct?**

13 A. Yeah.

14 **Q. You said from a business standpoint, you had to**
15 **settle with him?**

16 A. Well, because of the relationships with our --
17 his customers that's also a big customer of ours.

18 **Q. Which customer was it, if you recall?**

19 A. I'm sorry, I don't remember, but it was a
20 significant customer. And I think there was more than
21 one.

22 **Q. Was SIS accessing the Reynolds DMS in a way**
23 **that was technologically different than the way, say,**
24 **DMI, IntegraLink and Authenticom were accessing the**
25 **system?**

140

1 A. It was different in some respects. I can't
2 tell you specifically what they were, but Phil is much
3 smarter than the folks at CDK. And my view of the
4 situation, I was under the impression that it was a
5 more sophisticated approach.

6 **Q. I have seen in the documents the phrase "code**
7 **on the box." Are you familiar with that phrase?**

8 A. Very much so. It is very, very unpleasant as
9 far as we are concerned.

10 **Q. Would that be an accurate description of how**
11 **SIS was accessing the Reynolds DMS?**

12 A. I'm not clear as to exactly from a technical
13 standpoint how that was done. I would expect Bob
14 Schaefer to know.

15 MR. COHEN: Mr. Abrahamsen, can we take our
16 hourly break?

17 MR. ABRAHAMSEN: Yes.

18 (A recess was taken.)

19 BY MR. ABRAHAMSEN:

20 **Q. So we were speaking before the break at**
21 **CX 4273, which is the settlement agreement with SIS.**
22 **Was SIS integrating other third-party apps on to the**
23 **Reynolds system? You mentioned the Subaru one, so**
24 **referring to others than the Subaru one you mentioned.**
25 A. I'm not aware that they were. We had ample

141

1 evidence of Subaru. More than enough. So he could
2 have been doing other ones that we would not know
3 about. We would have no practical way to understand
4 what else he might be doing.

5 **Q. Let me ask you to take a look at page 003 of**
6 **CX 4273, and there's a paragraph, well Roman V, so like**
7 **a V. And I was looking at the first sentence of that**
8 **long paragraph, and there's a first clause, and then**
9 **the sentence continues after the parenthetical "SIS and**
10 **Mr. Batista, on behalf of themselves and their**
11 **employees and affiliates, covenant and agree not to**
12 **integrate with, access or attempt to integrate with or**
13 **access any Reynolds-brand DMS."**

14 A. Now we think we've got him.

15 **Q. So this is a prohibition on Mr. Batista and his**
16 **company integrating on the Reynolds DMS?**

17 A. Yes.

18 **Q. And then the next sentence states, "SIS and**
19 **Mr. Batista further covenant and agree not to sell,**
20 **transfer or assign to any affiliate or third party any**
21 **technology or know-how regarding integration with**
22 **Reynolds-brand DMS." And it goes on. What is this**
23 **prohibition aimed at?**

24 A. The same that him accessing Reynolds DMSes, DMS
25 systems in any way forever.

142

1 **Q. And what's the reference to third parties?**

2 A. He won't assist third parties with technology
3 or know-how.

4 **Q. And what was the concern about technology and
5 know-how with regard to third parties that you are
6 trying to address in this paragraph?**

7 A. We believed at that time and still do that Phil
8 is very smart and he is technologically the most
9 superior hacker, as far from a technology and knowledge
10 standpoint, better than DMI and IntegraLink.

11 **Q. And what third parties are you trying to
12 address in this paragraph?**

13 A. People that are doing the same thing or similar
14 things that Phil Batista is doing, which we would like
15 to think we were aware of all of them, but that's not
16 necessarily the case.

17 **Q. Then further down after there's a reference to
18 paragraph 3.A.v, and the sentence states that the
19 covenants set forth are not intended as a covenant not
20 to compete but rather as a contractual restriction of
21 access and attempted access intended to protect the
22 operational and data security -- I'm sorry, yeah, data
23 security integrity of the DMS. What is that a
24 reference to?**

25 A. I think that that is just stating further again

143

1 in a different way that he's not going to access
2 Reynolds' DMS systems. Whoever wrote this paragraph v
3 made a very serious effort to contractually lay that
4 down. And again, we thought we had killed the snake,
5 but we didn't.

6 **Q. When you say "lay that down" in that answer,
7 you mean lay down the prohibition about Mr. Batista
8 accessing your DMS?**

9 A. That's correct.

10 **Q. And the next sentence says, "These covenants
11 are intended to extend for the life of any Reynolds DMS
12 product." And that's just what you referenced in an
13 earlier answer, that you wanted this to extend for as
14 long as Reynolds was in the DMS business?**

15 A. Correct.

16 **Q. You mentioned in a prior answer that
17 Mr. Batista sought access to the Reynolds DMS after
18 this settlement agreement was reached, which was in
19 2014. What was the name of the entity that later tried
20 to get access to the Reynolds DMS?**

21 A. I don't remember the name of the entity which
22 essentially was a straw entity, which is how he got
23 access. Basically that straw entity did all the
24 accessing and fed him the data that he needed for the
25 application that he was building. We know what that

144

1 entity is, but I personally don't know the name of it.

2 **Q. And is the entity you are referring to, is it
3 gaining access to the Reynolds DMS through the same
4 type of technique that SIS was using or is it going in
5 through RCI?**

6 A. It's my understanding that this straw entity
7 had an RCI agreement and essentially used the power in
8 that RCI agreement to do what Phil Batista wanted to
9 get done. And they did it and turned everything over
10 to him on an ongoing basis the data that was required
11 for the product that he had built, which is either this
12 paragraph V is defective and the lawyer missed that
13 point or there's a case of fraud and deception. I
14 believe it's a case of fraud and deception.

15 **Q. Let me show you three exhibits. These are the
16 three contracts that were executed between CDK and
17 Reynolds. We'll go through them one at a time,
18 obviously, but perhaps for the economy of time, we'll
19 just put them all on the record now and then I'll ask
20 my various questions about them as we go forward.**

21 MR. COHEN: Then we'll have them all in front
22 of him, sure.

23 MR. ABRAHAMSEN: And they are CX 4045, which is
24 the Data Exchange Agreement; CX 4152, which is the 3PA
25 Agreement; and Exhibit 4153 which is the Reynolds

145

1 Interface Agreement.

2 CX 4152 has Bates REYREY0000091. CX 4153 has
3 REYREY0000025. And CX 4045 has Bates REYREY0000012.

4 BY MR. ABRAHAMSEN:

5 **Q. Before we plunge into the actual words in the
6 contracts, let me ask you a broader question. Just
7 could you state for the record what your role was with
8 regard to these contracts.**

9 A. Very minimal.

10 **Q. Who was responsible for having these contracts
11 come into being for Reynolds?**

12 A. Bob Schaefer.

13 **Q. Anyone else?**

14 A. I don't know to what extent our legal
15 department played in actually constructing the
16 contracts. Again --

17 **Q. I meant my question to kind of exclude the
18 legal department. I'm sorry, I should have made that
19 more explicit. And I intentionally cut you off.**

20 MR. COHEN: Thank you. I was listening and I
21 was comfortable with Mr. Brockman's response, but I
22 appreciate your safeguarding the privilege. And the
23 fact that he consults lawyers for legal contracts is
24 hardly earth shattering.

25 BY MR. ABRAHAMSEN:

146

1 **Q. But were there any other businesspeople**
 2 **involved in negotiating these contracts with CDK other**
 3 **than Mr. Schaefer?**

4 A. Not that I'm aware. Certainly all discussion I
 5 had about the subject was with Bob Schaefer.

6 **Q. Let me ask you to take a look at CX 4152 and**
 7 **ask you to look at CX 4152-016. I believe my questions**
 8 **will continue on. We'll have the same questions for**
 9 **the next several pages.**

10 **In the first part of the document, Section 1:**
 11 **List of Third Party Access Utilized, and then there's**
 12 **several entries. Extract Inventory Vehicles - Batch,**
 13 **what is this part of the contract referring to?**

14 A. This would be they keep vehicle inventories in
 15 a separate area inside their database, and the access
 16 would be to -- on a batch basis. And by batch, that's
 17 when you have a program that runs that copies records
 18 from one file into another file, and it does it without
 19 benefit of any screen interaction. That's why it's
 20 called batch.

21 **Q. Is this part of the contract starting with**
 22 **CX 4152-016, are these Reynolds applications that are**
 23 **going to be integrated into the CDK DMS through 3PA?**

24 A. I'm under the impression that these are records
 25 that will come out of 3PA and be used in a marketing

147

1 application in our marketing arm.

2 **Q. And what is your marketing arm?**

3 A. Naked Lime Marketing.

4 **Q. So Naked Lime Marketing will get data from CDK**
 5 **DMSes through 3PA?**

6 A. Yes.

7 **Q. And could you just go through the next couple**
 8 **of pages and just tell us what the other applications**
 9 **are? For instance, number 2 on CX 4152-017 appears to**
 10 **be Naked Lime Web.**

11 A. I'm sorry, I'm not following where I'm supposed
 12 to be.

13 **Q. CX 4152-017, there's a numbered paragraph in**
 14 **the middle of the page, number 2, Application Served.**

15 A. Yes.

16 **Q. What is Naked Lime Web?**

17 A. That's where we have a service which creates
 18 and maintains the website for a dealership, which is a
 19 very important part of their marketing.

20 **Q. And that would now be getting data through 3PA;**
 21 **is that correct?**

22 A. Yeah. Vehicle inventory data, that's correct.

23 **Q. And flipping over to CX 4152-018, number 3 is**
 24 **toward the top of the page and it's talking about**
 25 **ReminderTRAX. What is that?**

148

1 A. That is the service that prepares service
 2 reminder cards to be sent out to the consumers
 3 encouraging them to bring their vehicles in for
 4 50,000-mile service or winterizing or de-winterizing,
 5 that sort of thing.

6 **Q. And after the contract is signed, ReminderTRAX**
 7 **would be getting data from CDK DMSes through 3PA; is**
 8 **that correct?**

9 A. That's correct.

10 **Q. Let me ask you to flip to the first page of the**
 11 **Exhibit CX 4152-001, and under Background in the second**
 12 **paragraph it says, Vendor provides its application**
 13 **programs" and then there's a parenthetical "as further**
 14 **described in section is 2 of Exhibit 3PA-B, including**
 15 **all subparts, the applications, close quote, to certain**
 16 **CDK clients. So those are the Reynolds applications we**
 17 **were starting to look at a couple of questions ago; is**
 18 **that correct?**

19 A. That's correct.

20 **Q. Let me ask you to look at CX 4152-004, and**
 21 **actually it's paragraph E on that page. And I'm going**
 22 **to ask you whether this paragraph prohibits Reynolds**
 23 **from using hostile integrators for its applications.**
 24 **And I draw your attention to the first -- well, there's**
 25 **a sentence ten lines down in subparagraph E --**

149

1 MR. COHEN: I'm sorry, Dana, my assistant is
 2 bringing me something.

3 (Discussion off the record.)

4 BY MR. ABRAHAMSEN:

5 **Q. I'm sorry, Mr. Brockman, I'm having difficulty**
 6 **asking you to turn your attention to the sentence I**
 7 **want to ask you about. It's ten lines down in**
 8 **subparagraph E, and it begins, "Vendor agrees that it**
 9 **will not".**

10 A. I'm sorry, I'm just not finding that. I'm
 11 quite sure it's probably here, but this paragraph is a
 12 killer.

13 **Q. I'm sorry.**

14 A. Typically what I do when I'm faced with having
 15 to understand something like this is I get a copy in
 16 Word and I go back through and wherever I think I need
 17 new paragraph ought to start, I hit a return, and I end
 18 up with something that's about this long, but you can
 19 read it.

20 **Q. It's ten lines down in subparagraph E.**

21 A. Okay.

22 **Q. And I'm not going to read -- it's a long**
 23 **paragraph and this is a long sentence. I'll ask you to**
 24 **read that sentence and then answer my question, which**
 25 **is whether this sentence is stating that Reynolds**

150

1 agrees not to use hostile integrators to get onto the
2 CDK system.

3 A. Yes, I see and understand that provision.

4 Q. Is my statement correct that that provision
5 prohibits Reynolds from hostilely integrating onto the
6 CDK system?

7 A. Yes, that's correct.

8 Q. Let me ask you to take a look at the second
9 exhibit in our series of three exhibits. It's CX 4153.
10 This is the Reynolds Interface Agreement. I'm going to
11 direct your attention to two provisions starting with
12 definition 1.8 on CX 4153-002, Non-Approved Access. Do
13 you see that definition?

14 A. Yes.

15 Q. And is that definition a provision that is
16 relevant to CDK getting direct or indirect access onto
17 the Reynolds system for applications?

18 A. (Reviewing document.)

19 Q. Mr. Brockman, let me ask you to take a look at
20 CX 4153-006. The very first provision on that page is
21 paragraph 2.5.3, Compliance With Certification.

22 A. I'm sorry, I'm a little bit lost. Could you
23 repeat the directions again.

24 Q. No problem. CX 4153-006, at the very top of
25 that page, the first provision, 2.5.3.

151

1 A. Okay, I have got 2.5.3.

2 Q. Compliance With Certification.

3 A. Yes, I see that.

4 Q. Okay. I'm looking at the second clause of the
5 first sentence, "CDK acknowledges that any non-approved
6 access and/or non-approved use is strictly prohibited
7 and is considered a material breach of this RCI
8 agreement." Is this a prohibition on CDK using hostile
9 integration to get onto the Reynolds system?

10 A. That's correct. It's an anti-hacking
11 provision.

12 Q. Let me ask you to turn to our third agreement,
13 CX 4045, the Data Exchange Agreement. I'm going to ask
14 you -- you can take a look at any part of the agreement
15 you care to. I'm going to ask you questions about
16 paragraph 4.5, which begins on the very bottom of
17 CX 4045-004.

18 A. Okay. I'm on the page 4 of 13.

19 Q. Yes.

20 A. Okay.

21 Q. It's paragraph 4.5. It begins at the very
22 bottom of that page, Prohibition on Knowledge Transfer
23 and DMS Access.

24 A. Yes, I see and understand that.

25 Q. What is this paragraph intended to apply to?

152

1 A. What it is, it is an anti-hacking provision.

2 And it's pointed not at CDK, but at anybody that CDK
3 might help or share information with. That's my
4 understanding.

5 Q. So when you say it's anti-hacking, what is
6 the -- what was the fear that was being covered by this
7 paragraph?

8 A. Well, what's happening in general with all
9 these agreements is that Reynolds and CDK have agreed
10 to provide RCI interfaces to each other under standard
11 terms and conditions. And what this specific provision
12 is all about is that not only do we agree not to hack
13 each other, to only use authorized interfaces, but to
14 not help or assist or teach anybody else how to hack
15 into CDK's systems or Reynolds' systems. That's the
16 whole thrust.

17 Q. So at this point does this paragraph, since it
18 applies to CDK and Reynolds, is this an indication to
19 you that CDK has moved away from its laissez-faire
20 attitude and is now concerned about hackers getting
21 into their system?

22 A. I hadn't thought about it in that light, but
23 yeah, I believe that you could see it that way.

24 Q. Let me ask you to look at paragraph
25 CX 4045-003, and I'm looking at paragraph 4.2,

153

1 Third-Party Communications. And my only purpose in
2 showing you this paragraph -- let me let you read the
3 paragraph. Then I'll propound my question.

4 A. 4.2 is the one being referred to?

5 Q. Yes.

6 A. Yes.

7 Q. We had spoken earlier about a provision that
8 the parties entered into where they would each have to
9 seek approval and gain approval from the other firm in
10 order to issue press releases. And I just thought I
11 would show this to you, since we hadn't had the
12 document in front of us at the time we were talking
13 about, and ask you whether this is the provision that
14 you understood me to be asking about when I asked you
15 about whether the agreement contained such a provision.

16 A. I'm afraid I'm a little lost. Could you
17 reiterate?

18 Q. Could you look at 4.2, the last sentence. It's
19 a sentence that runs onto the next page, and it begins
20 three lines up from the bottom of the page. And it
21 begins, "Prior to the dissemination of any written
22 press releases or market communications by either
23 party". And I'm going to skip over to the end of the
24 provision on the very top of 4045-004, "such press
25 releases or market communications shall be tendered to

154

1 the other party for its review and approval."

2 A. Yes, I see that.

3 **Q. Are you familiar with it?**

4 A. Frankly, not. These documents, I was not
5 involved at all in their preparation. I authorized
6 them to be done so that the project could be finished
7 and that we could get CDK to stop hacking into our
8 systems. But as far as the content and the details
9 inside these contracts, I was not personally familiar
10 with -- I was not involved at all in the drafting, and
11 therefore, I can't claim or disclaim knowledge about
12 any particular piece. They got the job done. The
13 mission was accomplished. And I look back on it as a
14 successful effort.

15 **Q. You know, just sitting back and not, you know,**
16 **staring at this document, did you have an**
17 **understanding -- this was signed in February of 2018.**
18 **So did you have an understanding in the February of**
19 **2015 time period that you had an agreement with CDK**
20 **whereby you would both have to review, say, a press**
21 **release before you put it out talking about the**
22 **agreements that you had entered into?**

23 A. Frankly, I was not thinking very much about
24 that at all. I had moved on mentally from this project
25 at the time these documents were drafted.

155

1 **Q. Were there any press releases that Reynolds**
2 **sent out about these agreements?**

3 A. I'm sorry, I don't have any knowledge in that
4 regard. We may or may not have. I don't know.

5 **Q. And the same question for CDK. Did CDK send**
6 **out any press releases about the agreements?**

7 A. I'm sorry, I don't know.

8 **Q. Did you come to have an understanding during**
9 **the time period leading up to these agreements whether**
10 **CDK had a message that they wanted to communicate to**
11 **the market about these agreements?**

12 A. I'm sorry, I have no perception of even
13 thinking about that. I was on to the next project.

14 **Q. Did you ever become aware of any exchanges of**
15 **documents between Reynolds and CDK exploring whether to**
16 **send communications to the Reynolds sales force?**

17 A. I'm sorry, I'm not aware of any such thing.
18 Again, I was not active in this process. I had already
19 moved on.

20 (A recess was taken.)

21 BY MR. ABRAHAMSEN:

22 **Q. I would like to show -- Mr. Brockman, I would**
23 **like to show you what we've marked as CX 4176 and ask**
24 **you to take a look at it. It's a new exhibit. CX 4176**
25 **has Bates REYCID0046837. I would ask you to take a**

156

1 look at it. CX 4176 is an e-mail from Mr. Thornhill to
2 Mr. Schaefer and Mr. Martin dated February 26, 2015.
3 It's an e-mail with an attachment.

4 A. Yes.

5 **Q. CX 4176 is entitled -- well, the subject matter**
6 **of the cover e-mail, I should say, is Revised**
7 **One-Pager - CDK. Were you familiar with the drafting**
8 **of this document?**

9 A. Not at all.

10 **Q. Have you seen this document before?**

11 A. Frankly, not. I don't believe I have.

12 **Q. Putting aside the actual physical document**
13 **itself, were you aware of any undertakings at Reynolds**
14 **to draft up a document to -- so people could**
15 **communicate to various audiences what the CDK/Reynolds**
16 **agreement contained?**

17 A. I don't believe that I was. Again, this is now
18 substantially after the whole project got done
19 contractually, and I'm even further away from what's
20 happening in this area. All I know is that the general
21 reports are, yep, it's working; yep, CDK is doing what
22 they promised they would do. And therefore, not a
23 problem. I'm on to the next subject.

24 **Q. I appreciate that, and I'm just going to use**
25 **the document sort of as a way to ask you questions, but**

157

1 I'm appreciative of the fact that you haven't seen it.
2 You are not familiar with it. And I understand your
3 explanation and I will try not to belabor this line of
4 questioning, but I would like to ask you a couple
5 questions based on the document even though you are not
6 familiar with it.

7 A. Sure.

8 **Q. I would ask you to turn to CX 4176-004. And**
9 **the first box on the page has in the far right-hand**
10 **column Scenario: Media outlets find out about the**
11 **CDK/Reynolds agreement.**

12 A. Yes.

13 **Q. To your knowledge, were the agreements ever the**
14 **subject of a media inquiry?**

15 A. I don't recall specifically other than I think
16 that there was something. But exactly how big it was
17 and what all it contained, I don't remember if I ever
18 saw it.

19 **Q. Were you asked to give a statement to the**
20 **media?**

21 A. No.

22 **Q. The response as indicated in this same box is**
23 **that ensure CDK and Reynolds market message align. Do**
24 **you know what that's a reference to?**

25 A. Other than what it says in that sentence, no.

158

1 It says what it says. I agree that what it says was
2 appropriate, but I had no more specific knowledge about
3 it.

4 **Q. Did you ever have any communications in this**
5 **February 2015 time period with anyone at CDK about**
6 **aligning the market messaging?**

7 A. I don't believe so.

8 **Q. Did you have any discussions with anyone at**
9 **Reynolds about ensuring that the CDK and Reynolds**
10 **market message aligned?**

11 A. No, not that I recall. And I'm sorry, but
12 February 15th was -- February three years ago or four
13 years ago was a hundred years ago as far as I'm
14 concerned.

15 **Q. The next bullet down says, "Access to DMS by**
16 **dealers' DMS provider only." Do you know what that's a**
17 **reference to?**

18 A. Okay, this is the second block down?

19 **Q. The first block, second bullet down under**
20 **Response.**

21 A. Okay. Yes, I see that.

22 **Q. Is that a reference to the Reynolds position**
23 **that only people who have an RCI agreement are allowed**
24 **to access the Reynolds DMS?**

25 A. That's correct. That's in line with our

159

1 long-standing policy.

2 **Q. Was it your understanding that the position at**
3 **Reynolds was that if the media were to contact you,**
4 **that they would ensure that CDK and Reynolds were**
5 **aligned on that market message?**

6 A. Again, I'm not clear exactly who was doing what
7 here. I don't disagree with what was being done, but
8 it was, as far as I was concerned, it was
9 administration-type kind of issues about a project that
10 had already been done.

11 **Q. This document is dated February 26, 2015. My**
12 **understanding is that the contracts were signed on**
13 **February 18, 2015. So this document is eight days**
14 **after the contracts were signed. But I wanted to ask**
15 **you, you said that you had kind of finished with this**
16 **project earlier. Give me your best estimation of how**
17 **much earlier before this February 2015 time period**
18 **where you would consider yourself engaged in the**
19 **negotiation of these contracts.**

20 A. Unfortunately, I don't have a timeline of what
21 happened when, but I believe that I was detaching as
22 the final agreements were being drafted because the
23 reports I got back from principally Bob Schaefer was
24 all was in order, things were proceeding according to
25 our expectations and that my input was not necessary

160

1 anymore.

2 **Q. We looked earlier today at an e-mail exchange**
3 **you had with Mr. Anenen which was sort of, I believe,**
4 **in late June, early July of 2014. So with that as a**
5 **milepost and February of 2015 when the agreements were**
6 **signed, can you give me any idea of where in that time**
7 **period you became less engaged in the actual**
8 **negotiations of the contracts?**

9 A. I would say probably -- I would have periodic,
10 not scheduled discussions with Bob Schaefer about
11 what's going on. And one of my questions would be were
12 the contract negotiations reaching final stages. So it
13 would be whenever that was happening date-wise. That
14 would be when I was beginning to detach and move on to
15 the next project.

16 **Q. In terms of details about drafting the**
17 **contracts, what issues were you engaged on in that time**
18 **period after the July -- e-mails in July and the**
19 **signing of the contract? Were there issues that came**
20 **to your attention that needed to be resolved?**

21 A. Not that I recall.

22 **Q. Where is your office located?**

23 A. I live at home.

24 **Q. I live at home too.**

25 A. To describe how my life works is I get up in

161

1 the morning and I have a big blue bathrobe, terrycloth.
2 I take the dog out for a walk. I get a cup of coffee
3 and some toast, I sit at my desk and the day commences.
4 Much to my wife's unhappiness, many times noontime
5 comes and I'm still in the terrycloth bathrobe.

6 **Q. You'll be surprised to learn that was not**
7 **exactly the information I was driving at, but I**
8 **appreciate your answer. My next question was going to**
9 **be whether you worked in physical proximity with**
10 **Mr. Schaefer. That was the question I was going to get**
11 **to.**

12 A. He is in Dayton, Ohio. I'm in Houston. We
13 communicate typically by Skype when necessary. But he
14 is a very experienced person, been around a long time,
15 knows the waterfront, if you will. So I don't have
16 extensive communications with him. From an
17 organizational standpoint, I have 16 direct reports,
18 which is not right, but it is.

19 **Q. Is Mr. Schaefer a direct report?**

20 A. Yes.

21 **Q. So we obviously know from reading the documents**
22 **that you do use e-mail to communicate with Mr. Schaefer**
23 **and many other people. And you said you use Skype.**
24 **Any other forms of communication with Mr. Schaefer?**

25 A. Occasionally there will be a telephone call

162

1 when he's not in a place where he can access Skype.

2 **Q. So during this time period when the contracts**
3 **were being negotiated and so on, give me an estimate of**
4 **how frequently you are in contact with Mr. Schaefer**
5 **with regard to these contracts. And I'm sure it**
6 **varied, but just give me an estimate.**

7 A. Probably at that stage I would have been in
8 contact with him once a week, once every ten days, two
9 weeks.

10 **Q. Let me ask you to refer back to the exhibit in**
11 **front of you, CX 4176, and ask you to take a look at**
12 **the first box on the top of CX 4176-005.**

13 A. This is the top box?

14 **Q. Yes, sir.**

15 A. Yes.

16 **Q. My first question is under Scenario, it says,**
17 **"New third-party vendor contacts CDK." How are**
18 **third-party vendors dealt with in the contracts we**
19 **looked at earlier?**

20 A. Again, this was the orderly stand down period,
21 and as I recall, they got an announcement from CDK or
22 actually from DMI that they were no longer going to be
23 offering their Reynolds and Reynolds hacking services
24 and that they directed them on to us to talk about what
25 they needed to have done.

163

1 And I think it's important to point out that in
2 many or most cases, batch-type kind of data can be
3 handled by the dealer. They can run reports. They can
4 point those reports out to a PC and they can transmit
5 them into their third party, and they get all the data
6 and it works just fine. The issue is that somebody has
7 got to remember to do it every day. It's not one of
8 these things where you can just kind of set your watch
9 and everything is going to happen hands-off.

10 And I would think some fair number of third
11 parties were really pretty small and they really could
12 get at what they wanted as far as getting dealership
13 data by having to dealer send it to them.

14 **Q. Right. My understanding is that for existing**
15 **DMI clients, they would have the choice -- once the**
16 **contracts were signed, they would have the choice of**
17 **either going into the RCI program if they wanted to**
18 **continue to get automated, the data in an automated**
19 **fashion. Or if they did not want to go to RCI, they**
20 **could manually send the data. Is my understanding**
21 **accurate?**

22 A. That's correct.

23 **Q. And my understanding is that some chose to go**
24 **into RCI and others chose not to go into RCI. Is that**
25 **your understanding?**

164

1 A. That is correct.

2 **Q. Do you have any idea magnitude-wise how many**
3 **chose to go into RCI rather than not go into RCI?**

4 A. I don't have good information on that, but I do
5 know that it was some number. It was not just one or
6 two.

7 **Q. I'm sorry, some number that did what?**

8 A. Some number that actually elected to start
9 having their dealership customers print reports and
10 transmit them to the third party as opposed to being on
11 RCI.

12 **Q. CX 4176-005 talks about a scenario where**
13 **there's a new third-party vendor that contacts CDK. I**
14 **interpreted that as a new third-party vendor being a**
15 **vendor that hadn't already been subject -- had not**
16 **already been using DMI to integrate onto the Reynolds**
17 **system. Do you know whether the -- how the contracts**
18 **dealt with the situation where a brand new vendor would**
19 **go to CDK and ask for them to use their services?**

20 A. I don't know how the contracts addressed that
21 or if they addressed that, but I think what's stated
22 here is what actually happened in that if some new
23 third party shows up and wants to access data in
24 Reynolds' DMS systems, what happened here was that if
25 they talked to CDK, CDK forwarded them on over to us.

165

1 **Q. What was your interpretation of the reference**
2 **in the fourth bullet which says "CDK and Reynolds agree**
3 **on the benefits of the dealers' DMS vendor providing**
4 **data"?**

5 A. Well, I think it is what it says it is, that
6 there are obvious advantages, one of which is that
7 using an automated fashion that all the data that's
8 supposed to be collected gets collected. Again, the
9 key to the dealership actually printing reports and
10 transmitting them to the third party, it requires
11 somebody that is diligent and will do it every day like
12 they are supposed to or every week or every month. And
13 one of the benefits of an RCI-type contract is that
14 personnel failure is removed from the equation.

15 **Q. The third bullet down talks about DMI**
16 **continuing to provide data cleansing, standardization**
17 **and aggregation services. Is that a reference to DMI**
18 **providing a subset of services that do not include**
19 **actually entering into the DMS, what you have referred**
20 **to as hacking?**

21 A. Yes, that's my understanding. And what they do
22 in those services I'm not aware of. That's not a
23 business that we pursued and therefore have had no
24 occasion to come to understand what's included. I
25 think probably one of the obvious ones is a process

166

1 they call de-duplication. You end up with duplicate
2 pieces of data. And they have to have some software, I
3 think in some cases probably fairly sophisticated
4 software, that detect the presence of dupes and
5 actually have confidence enough where they can actually
6 combine them where all that happens automatically.

7 **Q. And does the third bullet saying that DMI will**
8 **continue to provide those services read in conjunction**
9 **with the fourth bullet that CDK and Reynolds agree on**
10 **the benefits of the dealers' DMS vendor providing data,**
11 **the recitation of the fact that CDK will be moving away**
12 **from its laissez-faire approach to third-party**
13 **integration on its DMS?**

14 A. I'm afraid I'm missing the point.

15 MR. ABRAHAMSEN: Why don't you re-read the
16 question, and then I'll probably end up rephrasing it.

17 (The record was read as requested.)

18 THE WITNESS: Sitting here reading it today
19 after the fact, I agree that it could be understood
20 that way. However, this particular document, I didn't
21 draft it. So I'm unfamiliar with it. I haven't seen
22 it. I have seen it for the first time today.

23 BY MR. ABRAHAMSEN:

24 **Q. And I appreciate you hanging with me through**
25 **these questions and letting me use that as a crutch to**

167

1 ask you questions. Let me ask you to take a look at
2 CX 4182. CX 4182 bears Bates REYCID0675485.
3 Mr. Brockman, have you seen the document before?

4 A. I don't recall seeing this document ever
5 before.

6 **Q. It's entitled CDK Deal Information -**
7 **February 2015.**

8 **I would like you to turn to the third page of**
9 **the exhibit, which is CX 4182-003, and ask you to take**
10 **a look at the paragraphs -- there's two numbered**
11 **paragraphs under the heading that's underlined Key**
12 **Messages.**

13 A. Yes, I see those.

14 **Q. Then the first key message, I think we've**
15 **talked about the first sentence, "Reynolds has long led**
16 **the way in the battle on DMS security." When you talk**
17 **about DMS security, aside from keeping third party,**
18 **what you refer to as, hackers off the system, what**
19 **other security measures would you say Reynolds has led**
20 **the way on?**

21 A. Well, there's, for example, establishment of
22 user ID records inside the DMS system. One of the
23 things that we did that I have not heard anybody else
24 do it, since we also in most cases have the payroll
25 information, what we do is we look at the user ID, and

168

1 before we declare it a valid employee, we go check the
2 payroll file, which is kind of simple but you know,
3 certainly a reasonable thing to do from a security
4 standpoint. And again, nobody else has done that that
5 we know of.

6 **Q. Would that help detect whether there is a**
7 **third-party integrator getting a user ID and password**
8 **from the DMS?**

9 A. It would certainly detect them being provided a
10 user ID and password. There is -- I believe that
11 software also double checks that there is not two
12 people connected to a single user ID. And again, the
13 name and user ID has to be a name in the payroll file.

14 **Q. So if somebody like Mr. Batista was given a**
15 **user ID and a password by a dealer to run an app on**
16 **their dealership's DMS, you would use that -- that**
17 **software would allow you to detect that Brown Chevrolet**
18 **does not have a Phil Batista as an employee? Is that**
19 **how it works?**

20 A. Exactly.

21 **Q. Let me ask you to look at -- and I appreciate**
22 **I'm just using this document as a crutch to ask my**
23 **questions because I know you haven't seen it and you**
24 **didn't write it. CX 4182-003 Key Messages sentence**
25 **numbered paragraph 1, second sentence, and I'll read**

169

1 it: "In doing so, other DMS providers are finally
2 acknowledging that the fastest and correct way to move
3 data between parties is to have the DMS push the data."
4 Is the phrase "have the DMS push the data" a reference
5 to what RCI does?

6 A. Yes. RCI is typically, and it could be in all
7 cases, set up to actually wake up and perform program
8 instructions about what data to get, where to send it
9 to, from which dealership. And I think in some cases
10 even the hour of the day is specified in the RCI
11 program.

12 **Q. The first clause in this sentence says "In**
13 **doing so, other DMS providers are finally**
14 **acknowledging". What is the reference in your**
15 **interpretation of the other DMS providers?**

16 A. Other than what it says, other DMS providers.

17 **Q. In this February 2015 time period, obviously**
18 **you had -- we have been talking about CDK and its**
19 **position on data security. Were you aware of any DMS**
20 **provider other than CDK, perhaps, that was**
21 **acknowledging that the safest way to move data is to**
22 **have the DMS push the data?**

23 A. That would be the only one that I would be
24 aware of. Quite likely, some of the more minor DMS
25 providers had also adopted it, but I'm not aware of

<p style="text-align: right;">170</p> <p>1 that.</p> <p>2 Q. And the second numbered paragraph, the first</p> <p>3 sentence states, "CDK is finally acknowledging that</p> <p>4 they need to move forward with securing their DMS."</p> <p>5 And "securing their DMS" is underlined. What is your</p> <p>6 interpretation of that?</p> <p>7 A. That's our belief, that what they are doing is</p> <p>8 that they are migrating to what we have been doing all</p> <p>9 along.</p> <p>10 Q. What you had been doing all along with regard</p> <p>11 to securing your DMS?</p> <p>12 A. Yes.</p> <p>13 Q. And would that include adopting a position</p> <p>14 where they would not permit third-party integrators to</p> <p>15 get onto their DMS?</p> <p>16 A. Yes.</p> <p>17 Q. The next paragraph down is entitled Important</p> <p>18 to Note. It's underlined. I would ask you to read the</p> <p>19 paragraph and then I'll ask my questions.</p> <p>20 A. Yes.</p> <p>21 Q. Let me give you my interpretation of what the</p> <p>22 paragraph is saying and then you correct me if I have</p> <p>23 misinterpreted it. It seems like now that the</p> <p>24 contracts have been signed, CDK is going to provide</p> <p>25 Reynolds with the identification of its clients that</p>	<p style="text-align: right;">172</p> <p>1 what's going to happen is as we finally turn loose this</p> <p>2 next security update, there's going to be some people</p> <p>3 that won't work.</p> <p>4 And the fact that this even has to be said is</p> <p>5 kind of amazing because it is so clear that if you are</p> <p>6 not on the list, if we don't know that you are a CDK</p> <p>7 customer, certainly they will get the full force of the</p> <p>8 security changes that are impending.</p> <p>9 Q. And then there's a reference in the next</p> <p>10 sentence that we will know immediately whether these</p> <p>11 parties are supposed to be broken or not. And I</p> <p>12 interpret that to mean that you don't intend to disrupt</p> <p>13 the CDK clients but that if somebody is using an</p> <p>14 integrator that you are not protecting, they are</p> <p>15 supposed to be blocked. Am I interpreting it</p> <p>16 correctly?</p> <p>17 A. Absolutely correct.</p> <p>18 Q. So --</p> <p>19 A. And we have no knowledge as to how many, who,</p> <p>20 because an exploit that gets past or attempts to get</p> <p>21 past a security change, there's no way for us to know</p> <p>22 until we apply a security change and then somebody</p> <p>23 hollers. That's when we know that there's somebody new</p> <p>24 that we didn't know about before. And hopefully at</p> <p>25 this point there should not have been very much of</p>
<p style="text-align: right;">171</p> <p>1 its integrating onto the Reynolds system. And</p> <p>2 following that, once Reynolds receives those and is</p> <p>3 able to protect those, Reynolds is going to put out its</p> <p>4 security update, a new security update; is that</p> <p>5 correct?</p> <p>6 A. Yes.</p> <p>7 Q. And the second-to-last sentence ends with the</p> <p>8 clause "meaning a number of users will be broken."</p> <p>9 What is your interpretation of that?</p> <p>10 A. Well, this goes back to the peaceful stand down</p> <p>11 process. Prior to that we had notified CDK that we had</p> <p>12 a number of security changes that we had been holding</p> <p>13 off releasing, but if they didn't finally agree to get</p> <p>14 out of our boxes, quit hacking us, we were going to</p> <p>15 turn loose those security changes which were going to</p> <p>16 make basically all of CDK inoperative as far as</p> <p>17 extracting data out of Reynolds' machines.</p> <p>18 Well, once the contract was done, the agreement</p> <p>19 in the stand down was that it would be an orderly stand</p> <p>20 down and there would be no stand downs that would cause</p> <p>21 trouble, unhappiness on the part of dealers. Well, in</p> <p>22 order to do that, we have to know who because we don't</p> <p>23 know who all the ADP customers are. We don't know who</p> <p>24 all their third parties are. So what we are talking</p> <p>25 about here is that if we don't get the names, then</p>	<p style="text-align: right;">173</p> <p>1 that, but we don't know.</p> <p>2 Q. Well, so what happened? At this point, as I</p> <p>3 understand it, you have -- you are protecting some SIS</p> <p>4 customers under their stand down, and you are</p> <p>5 protecting the CDK customers under their stand down,</p> <p>6 and then you put in the security change, as I</p> <p>7 understand it. And so what happened? Were there</p> <p>8 people who were disrupted?</p> <p>9 A. The answer to that is I don't know of any. I</p> <p>10 just don't know whether there were, whether there were</p> <p>11 not. I do know that there was -- I don't recall any</p> <p>12 serious commotions. Whatever it was, I don't think</p> <p>13 there were very many.</p> <p>14 Q. So did there come to your attention any angry</p> <p>15 phone calls or letters or other forms of communication</p> <p>16 from people that were being disrupted as a result of</p> <p>17 your security enhancements after this March of 2015</p> <p>18 time period?</p> <p>19 A. Not that I'm aware. Of course, since then</p> <p>20 what's happened has been relatively quiet. Not</p> <p>21 completely, but relatively. Nothing major. But as</p> <p>22 security changes go on, continue to get improved, I'm</p> <p>23 sure that we'll find more. Where there is one hacker</p> <p>24 there, there are ten more behind them.</p> <p>25 Q. Just so the record is clear, I followed your</p>

174

1 answer to the question. The question was very broad,
2 so I'm going to break it down into two questions as
3 between app providers and OEMs just so the record is
4 clear about this.

5 Following this March 2015 time period, were you
6 contacted by any OEMs because they had had applications
7 that they wanted to use that were disrupted?

8 A. Personally, I received no such contact.
9 Whether or not someone else in the organization did,
10 I'm not aware. But I'm quite sure that I did not.

11 Q. And with regard to app providers in this time
12 period following March of 2015, were you contacted by
13 any app providers with regard to anger over disruption
14 of their apps?

15 A. Not me personally.

16 Q. You mentioned in an earlier answer that, I
17 forget the exact phrase you used, but you noted that
18 CDK had had a number of CEOs or words to that effect.
19 We have been speaking today and yesterday about
20 Mr. Anenen. Who are the other CEOs of CDK in addition
21 to Mr. Anenen that you are aware of?

22 A. Mr. Anenen was the last true CEO because he is
23 like a 37-year veteran of the business and probably the
24 longest serving veteran CEO. And probably I'm the only
25 one that has got more than he. I have got 49 years.

175

1 But I can't recite the names to you. The most
2 recent was a gentleman that was president of Intel.
3 And he was dismissed from Intel for an inappropriate
4 relationship. And his new job is CEO of CDK.

5 And there were two others besides him prior.
6 And this is caused by the fact that CDK is controlled
7 by a group of hedge funds. Hedge funds, it's my
8 understanding that they hold like 60 percent of the
9 stock of CDK. And they are very impatient for
10 improvement in operations and the profits to be -- to
11 come about inside CDK. So therefore, they appear to be
12 very quick on the trigger to turn over CEOs in seeking,
13 you know, improved stock valuations so they can
14 ultimately sell the stock that they hold today and make
15 a profit and get on to the next deal. I'm sure it's
16 been disappointing to the hedge fund folks that it has
17 not already been able to occur.

18 And this is all a matter of public record and
19 probably is the only part of CDK that I pay attention
20 to. I'm always curious as to who my counterpart is.

21 Q. So we went through some -- we talked about some
22 conversations you had with Mr. Anenen. Telephone
23 conversations, I believe. Did you also meet with him
24 at NADA?

25 A. Briefly. NADA is, you shake hands with old

176

1 friends and old enemies, but there's no serious
2 conversation that takes place. There's too much else
3 going on.

4 Q. So you had serious conversations with
5 Mr. Anenen over the phone, the ones we spoke about?

6 A. Yes.

7 Q. And did you have any conversations with
8 Mr. Anenen after the contracts were signed that we
9 looked at?

10 A. No. As a matter of fact, the only interaction
11 I have had with him is at the big national auto dealers
12 association convention. He was no longer with CDK, and
13 he stopped past just to say hello. He's a nice guy.

14 Q. To what extent have you had conversations with
15 the CEOs at CDK who have followed Mr. Anenen?

16 A. None.

17 Q. You have never spoken with them on the phone?

18 A. No. I don't exist as far as they are
19 concerned. Yes. And I have not -- I got other things
20 better to do than to seek out a conversation with them.

21 Q. And just to make sure the record is clear on
22 this, have you had occasion to meet with them
23 informally at an industry conference?

24 A. As far as I know, the answer is no. However,
25 what happens is that at NADA people kind of travel in

177

1 packs of two, three, four, five, six, seven, eight, ten
2 people. And they come by and I would not recognize
3 them by face. And they don't announce themselves.
4 They don't have a sign on them that says I'm CEO of
5 CDK. So I may possibly have seen some but not
6 understood who they were.

7 (A recess was taken.)

8 BY MR. ABRAHAMSEN:

9 Q. Mr. Brockman, we were talking yesterday, I
10 believe it was, about how the OEMs need to certify a
11 DMS provider in order for the DMS provider to have
12 their franchise dealers as using the DMS. Do you
13 recall that?

14 A. Yes.

15 Q. And we talked about decertification as
16 something that would be very, very bad for the DMS
17 provider if an OEM were to do that.

18 A. Disastrous.

19 Q. Short of decertification, is there other things
20 that OEMs can do to the DMS to sort of influence how a
21 DMS undertakes certain policies?

22 A. Yes. Probably one of the ones that we see the
23 most often is -- and we'll say that Ford Motor Company
24 has a new initiative regarding a service and how that's
25 handled from a computer standpoint. And what they do

178

1 is, they kind of separate it into multiple pieces. And
2 there will be mostly old pieces but then some new
3 pieces. And let's say that the new piece is a new
4 interface where a dealership that uses the right DMS
5 with the right certifications, they can type in a
6 vehicle identification number and get an instant
7 readback of all the warranty claims that's been made on
8 that vehicle so that you can see if, say, for instance
9 another dealership fixed something under warranty, but
10 they really didn't fix it. So you have the right to
11 kick over to them and say, look, you guys fix it.

12 Well, if you are not on the good guy list as a
13 DMS provider, you may not get access to this special
14 new facility that Ford is making available, which is
15 very, very worthwhile and important to dealership
16 customers. So therefore, you are in the
17 never-neverland where you are not decertified, but
18 again you are not quite fully certified either. And
19 larger dealerships will be very, very sensitive to
20 this, which is we have a lot of customers in that
21 category.

22 And so it even comes down to dates of approval.
23 If we don't meet their schedule, their desired schedule
24 as far as the creation of the additional facilities
25 inside the factory communications, they'll say, okay,

179

1 you are late but we are still going to certify you, but
2 we are not going to give you that until next March.

3 That's dirty pool, but they are the guys. And
4 we end up having to work programmers nights and
5 weekends to meet their crazy schedule as far as when
6 something is supposed to be built, tested, implemented
7 in the field by their by-god date.

8 **Q. And I'm curious, you have mentioned several**
9 **times in the last two days that you contemplated**
10 **throwing the switch on CDK and blocking their apps,**
11 **shutting them down. Was there any concern that if,**
12 **say, you shut down CDK because you didn't have an**
13 **agreement with them and caused disruption to a lot of**
14 **dealers' use of CDK, the products that CDK was**
15 **integrating onto their DMSes, was there any fear that**
16 **OEMs would be angered by this also, the dealers would**
17 **complain to the OEMs and that the OEMs would take**
18 **actions adverse to Reynolds because of the blockage**
19 **that had taken place?**

20 A. That's always a possibility. But the hopes are
21 in any kind of situation such as we went through CDK
22 that cooler heads would prevail and a reasonable
23 situation would occur as opposed to a disastrous one.
24 And historically, that's always been the case. Now,
25 you can't say that's going to be that way on every

180

1 situation forever, but that's the opening expectation.

2 **Q. And in this particular instance, you did reach**
3 **an agreement with CDK, and the anger that would have**
4 **been directed to the OEMs was avoided, presumably?**

5 A. Correct.

6 **Q. Let me ask you to take a look at an Exhibit**
7 **CX 4038. CX 4038 has Bates REYCID0577749. It's an**
8 **e-mail with three pages of attachments. The subject**
9 **line is 6240's.**

10 A. Well, I conclude that we've got a senior vice
11 president of sales that writes pretty good.

12 **Q. What do you conclude that based on?**

13 A. Well, short paragraphs, to begin with.

14 **Q. You said vice president of sales, and you are**
15 **referring to Keith Hill; is that correct?**

16 A. Yes, that's correct.

17 **Q. Have you seen this document before?**

18 A. No, I have not.

19 **Q. With your indulgence, I'm going to still use as**
20 **an effort to ask you to interpret certain things in it.**
21 **In his cover e-mail, he talks about some of the**
22 **subjects we have been talking about in the last two**
23 **days, data security, and he uses the phrase in the**
24 **sentence "unattended automated access."**

25 A. Yes.

181

1 **Q. How do you interpret that?**

2 A. Well, there the dividing characteristic is
3 unattended. And the reason for that is and that's my
4 interpretation from a liability standpoint is that if a
5 dealer runs a report and then turns around and e-mails
6 that to a third party, that's perfectly within his
7 rights to do that, and there's nothing incorrect about
8 that. But it also means that if something goes wrong
9 from a data breach standpoint, it's his problem. It's
10 not our problem.

11 So the unattended access just crosses the line
12 to what happens over and over again, and that's an
13 unattended report will be set up and it will run, and
14 it will run faithfully every day, every week, every
15 month, and nobody knows it's running. The actual
16 running of an unattended batch job creating a data set
17 that would be used outside the dealership, there's no
18 scream of flashing lights that says we are now
19 currently extracting payroll data.

20 But the point is that if the dealer decides to
21 extract data out of his system and then put it in his
22 PC and transmit it to somebody, that's his problem.
23 When it's automatic and we allow that to occur, all of
24 a sudden we start getting our hands in the liability
25 grease.

182

1 **Q. So firms like DMI, IntegraLink, they were doing**
 2 **unattended automated access to Reynolds' DMSes?**

3 A. Correct.

4 **Q. Is there -- I'm just trying to figure out in my**
 5 **mind whether unattended and automated are redundant.**
 6 **Can there be automated access to a DMS that doesn't**
 7 **inflict liability on Reynolds?**

8 A. The only one that I can conceive of -- and this
 9 is a theoretical answer. I don't know that it exists
 10 in real life would be vehicle data used to populate
 11 websites, because vehicle data we perceive to be --
 12 since it's available on every dealership's website to
 13 begin with, this is basically public data, and
 14 therefore -- but also it changes all the time. So
 15 therefore, an automated unattended process for
 16 consolidating and transmitting vehicle inventory data,
 17 there is no liability associated with that. But
 18 anything that has name, rank, serial number, you know,
 19 personal information, PII or NPPI, that has tremendous
 20 liabilities associated with that, the likes of which we
 21 have not begun to see.

22 **Q. To your knowledge, did Reynolds send out**
 23 **talking points to the sales staff so that they would be**
 24 **able to address the security issues after contracts**
 25 **were signed?**

183

1 A. I think that's what this document is all about.

2 **Q. Were you aware at the time -- this is sort of**
 3 **the March 2015 time period. Were you aware that these**
 4 **instructions were being sent out to the sales staff?**

5 A. No. And I would have no occasion to be aware,
 6 because Keith Hill is a senior VP of sales. He is an
 7 interesting person in that he was a mathematician, a
 8 math major in college, but he also was a high school
 9 football coach. And so you have the personnel planning
 10 capability he has because, of course, high school
 11 football is all about that, deciding, you know, who can
 12 start, who can play, who does what position, who gets
 13 benched because of being unmannerly with a mathematics
 14 background which means that he understands computer
 15 systems. While he's not a software person, he
 16 understands from a principle standpoint how the guts of
 17 the things are supposed to work.

18 **Q. Is he a direct report to you?**

19 A. Yes. And I might add a very capable direct
 20 report. As a result, I don't spend a lot of time with
 21 him. My theory as far as personnel management is
 22 concerned is when they can do as good as I can do it, I
 23 need to let them do it.

24 **Q. Let me ask you to flip to the second page of**
 25 **the exhibit, CX 4038-002. And there's a series of hash**

184

1 **marks, and the last hash mark talks about DMI and**
 2 **IntegraLink, and the last sentence of that hash mark**
 3 **says, "They now see the risk inherent in facilitating**
 4 **unattended automated data extraction." Do you**
 5 **interpret that as the risk inherent in the data being**
 6 **extracted and then getting into the wrong hands?**

7 A. Yes.

8 **Q. The bullet above that says "CDK and Reynolds**
 9 **have partnered together to push data securely. Thus,**
 10 **85 percent of the market is now in agreement with our**
 11 **stance." What do you interpret that to mean?**

12 A. Well, I interpret that to mean that as
 13 knowledge of the availability of the 3PA program has
 14 now become pretty widespread, and it's now obvious that
 15 CDK has changed their feeling as far as data security
 16 is concerned to no longer be laissez-faire but to
 17 actually have a more secure policy.

18 **Q. Do you interpret that to extend to both CDK**
 19 **agreeing to use RCI for its apps and also to restrict**
 20 **third-party integration on its own system?**

21 A. I'm not focusing on what they do as far as
 22 their own system is concerned, but the fact that they
 23 understand our position and they are not going to try
 24 and hack us.

25 **Q. Let me ask you to take a look at Exhibit**

185

1 **CX 4459. CX 4459 bears Bates REYCID0186574. This is**
 2 **an e-mail dated November 21, 2016 from Tommy Barras to**
 3 **Mr. Schaefer and Mr. Brockman. Who is Mr. Barras?**

4 A. He is an executive VP of software development.

5 **Q. Is he a direct report to you?**

6 A. Yes.

7 **Q. Did he -- was he working at Reynolds when UCS**
 8 **acquired Reynolds?**

9 A. No. He is originally a UCSer. He and I have
 10 worked together probably 48, 49 years.

11 **Q. And he's been doing software development with**
 12 **you in that whole time period?**

13 A. Yes.

14 **Q. In the body of his e-mail to you at the top of**
 15 **the first page of CX 4459, the first word in the**
 16 **sentence is S-Y-S-C-H-E-C-K. What is that?**

17 A. Syscheck. I hope you'll bear with me because
 18 some of the explanation of necessity has got to be a
 19 little technical. The operating system that the DMS is
 20 built around is what's called a multi-user operating
 21 system. And what that means is that if you have a
 22 system that has 100 PCs attached to it, each one of
 23 those is a separate user as far as the operating system
 24 is concerned. And the operating system, to the extent
 25 that it is set up that way, can handle 100 different

186

1 users pretty much simultaneously. Well, they are not
2 exactly simultaneously. They are kind of close. Every
3 minute of computer power that's available, it's used by
4 many different users of the 100 that are out there.

5 Now, that's really pretty cool except for the
6 fact that people like in the accounting department that
7 have big end-of-month reports they have to create,
8 batch reports are very different in their usage
9 characteristics. If you have a terminal-based
10 application, somebody that uses a terminal and then
11 they won't, and that frees up computer power for all of
12 the rest of the folks. Even if you have five or six
13 people, they are not -- each one of them isn't getting
14 that big a bite of computer power.

15 But in the accounting world, we have big batch
16 programs that run at the end of the month. Think of it
17 like a machine gun. They just load in this infinite
18 supply of ammunition and they take the trigger down and
19 it just goes with no break. And what that does is you
20 can actually -- not theoretically, but it actually
21 happens in practice where the accounting department
22 with six or seven users can suck up all the computer
23 power, which means people that run terminal
24 applications like parts invoices or service repair
25 orders or service invoices, they have to wait.

187

1 And this is a logic issue that is a little hard
2 to get around, but we devised Syscheck. And what
3 happens is Syscheck is a dipstick into the computer
4 usage, and it knows -- you can dipstick and say, okay,
5 it's 85 percent consumed or 90 percent or 50 percent,
6 but when it gets up fairly high, and I would say
7 probably 85 or 90, it's smart enough that it suspends
8 the batch programs and lets the other 90 users in the
9 pile, it will get their answers quickly. Because the
10 transaction base, what you hate is when you enter a
11 bunch of data entry, hit the button and then you got to
12 wait.

13 And of course, what that then leads to is users
14 accuse the DMS provider of a defective system, you are
15 forcing us to buy a bigger computer. And our only
16 defense now, which is a pretty good defense, we turn on
17 Syscheck and people that are wanting to do something,
18 if the computer system is overloaded, they get a
19 message on their screen that says, I'm sorry, the
20 accounting department is doing you in. Anyway, that's
21 what Syscheck is all about.

22 **Q. So what is the reference in that same sentence**
23 **to the AUR exemption?**

24 A. That one I'm having a little difficulty with
25 what AUR is. I think it had something to do with where

188

1 we basically shut down batch reports that are consuming
2 computer time with the indication that if we want to
3 run this thing, you've got to do it at night.

4 Now, interestingly enough, all this sometimes
5 results in a power play between departments in that the
6 accounting folks will raise up and beat their chests
7 and say you guys don't let us run our reports all day
8 whenever we want to run, tough luck if payroll doesn't
9 get run on time. And everybody gets all shaky about
10 that. But that's the wrong answer.

11 The right answer is that the transaction-based
12 customers need to have as close as we can get to
13 instant response time because those people are
14 profit-producing people. The dealership, finance
15 managers, service managers, they need to have the
16 capability to get their work done. And the accounting
17 folks need to wait. And I don't publicize my feelings
18 on that widely, but I mean, that's the truth.

19 (A recess was taken.)

20 BY MR. ABRAHAMSEN:

21 **Q. Let me show you an exhibit we've marked as**
22 **CX 4420 and ask you to take a look at it. CX 4420 has**
23 **Bates REYCID0186518. The exhibit is an e-mail from**
24 **Mr. Schaefer to Mr. Brockman in November 2016. And the**
25 **subject of the document is Stone Eagle Request For**

189

1 **Changes. Mr. Brockman, who is Stone Eagle?**

2 A. Stone Eagle is a third party that specializes
3 in analysis of vehicle sales and more especially
4 vehicle financing and aftermarket sales. And they get
5 information on car sales, quote, deals. A deal is what
6 we -- a term we use to apply to the facts of the whole
7 transaction and the paperwork. The whole transaction,
8 which is kept in a file folder. And that's what Stone
9 Eagle wants from us in terms of interface that they
10 want all the finance deals for a month. And then they
11 go run all their analysis programs and create nice bar
12 charts and graphs and that sort of thing so that the
13 dealership will understand how well they are doing in
14 that area. And specifically, they'll understand by
15 person, by finance manager who is doing what as opposed
16 to looking at the overall department and saying, yes,
17 it's good or bad or whatever. It's specific
18 individuals.

19 **Q. In the e-mail that's in the middle of the first**
20 **page of this exhibit, there's an e-mail from**
21 **Mr. Schaefer to you dated March 15, 2016, and the first**
22 **sentence of the e-mail says, "Stone Eagle executes this**
23 **process today using their interface." What interface**
24 **is being referred to in that sentence?**

25 A. Stone Eagle has been a customer that's like an

190

1 RCI customer, but it predates that. They are a very
2 mature company. They have been around a long time.
3 And what's happening here is that we are saying, look,
4 you got to go forward to the RCI process. They don't
5 particularly want to do that because it involves them
6 getting involved with programming, creating a new
7 interface from the data that they want. Their old
8 stuff, as far as they are concerned, works perfectly
9 fine. But we've said that the old process is dying.
10 You got to go to the standard process. And they are
11 dragging their feet, frankly. As a matter of fact,
12 they were the worst that exhibited dragging their feet.
13 They didn't say no. They just couldn't get it done.
14 We talked to them and they would give us a new
15 anticipated deadline, and we would go away and come
16 back when they missed the deadline. And that had been
17 going on for literally a couple of years. Other than
18 that, they are nice people. They pay their bills.
19 They are not complainers.
20 And in this particular situation, they figured
21 out that the RCI interface that we had prepared for
22 them, they had left out the issue where there is a deal
23 done on paperwork and electronically, but it got
24 unwound. In other words, it never actually happened,
25 yet the data was all recorded. And as far as the data

191

1 pull that was happening here, we looked like everything
2 was just fine, but it turns out, out of the month there
3 were six deals that didn't happen, which impact the
4 numbers on the reports.
5 And so we've got to do -- this one is called
6 Deal Reversal Notification. And it was one more thing
7 we had to do before we could finally get them to move
8 forward and completely get off the old interface and
9 get onto RCI.
10 **Q. In the footnote -- or I shouldn't say in the**
11 **footnote. There's a sentence in the e-mail in the**
12 **middle of the first page of CX 4420 that says, "As a**
13 **footnote, we've received the latest enhancements for**
14 **Stone Eagle that allow us to replace the Stone Eagle**
15 **hostile interface." In what way was Stone Eagle a**
16 **hostile interface?**
17 A. That is a misnomer. It's not a hostile
18 interface. It's like a hostile interface because its
19 bandit is different, but it was not hostile in the fact
20 that we definitely knew about it and condoned it,
21 probably were even selling it as a service and charged
22 them for it. But again, it was an obsolete interface.
23 It was less secure, and we wanted to move to RCI.
24 **Q. How was it less secure?**
25 A. I don't know the details. I just know that it

192

1 was -- we were concerned that it was an oddball.
2 Whenever things are oddball, nothing good comes out of
3 that.
4 **Q. Let me ask you to take a look at CX 4463.**
5 **CX 4463 has Bates REYCID0265394. It's an e-mail dated**
6 **August 1, 2017 from Mr. Barras to Mr. Brockman on the**
7 **top. And it's a series of e-mails that follow.**
8 A. Yes.
9 **Q. Mr. Brockman, in the first e-mail in the**
10 **exhibit, the top one -- the top one on the first page**
11 **of CX 4463, the second paragraph states, "Stone Eagle**
12 **exemptions go beyond Hendrick. Third party has 100**
13 **exemptions into our ERA systems." What exemptions are**
14 **being discussed here?**
15 A. What's happening here is that the Stone Eagle
16 interface process has been around for a long time. It
17 probably dates before my time at Reynolds. And where
18 they have a bypass around the security changes, and
19 this is not desirable. It's a hangover. It's a
20 cleanup. And what's happening is Tommy Barras is
21 telling me, look, it's worse than just the current
22 Stone Eagle stuff. There's a bunch of others with
23 exceptions laying around out there.
24 At this point we are getting more focused on --
25 we actually have reports now that list every kind of

193

1 exception that's in place. And we give these
2 exceptions or are really forced to give them from major
3 customers. For instance, here they are talking about
4 Heritage is a very big customer, Crain, DARCARS is
5 right here in D.C., and evidently we have some manner
6 of exception for those folks where they are not on RCI.
7 They are on something else that predates RCI.
8 This is another example of the situation where
9 we have power to block things, but there's also a cost.
10 The cost is customer relations with major accounts.
11 **Q. Right. I mean, if you block them, they would**
12 **possibly move to a different DMS system?**
13 A. The noise would precede anything like that.
14 **Q. What noise?**
15 A. The customer just calling up and wearing
16 everybody out.
17 **Q. In the second sentence of the e-mail on the**
18 **very top of the first page of the exhibit, it says,**
19 **DSV, I think it's supposed to be "has" been talking**
20 **about moving for years now. No end in sight. What's**
21 **DSV?**
22 A. Data services, I believe, is what that stands
23 for.
24 **Q. So this is a department within Reynolds?**
25 A. Yeah, that reports to Bob Schaefer. And what's

194

1 happening is, and as Mr. Barras is being very pointed
2 in his needling over the situation and quite properly
3 so, the amount of things that we've had to clean up
4 inside Reynolds has been huge. And we've aggressively
5 worked at that, but it's still not done yet.

6 BY MR. LANNING:

7 **Q. Mr. Brockman, talking about this idea of**
8 **exemptions, were you in the habit or in the practice at**
9 **Reynolds to give exemptions to certain customers that**
10 **were using what you call hackers?**

11 A. Yes. And these would be large customers.
12 Frankly, in a lot of cases pretty sophisticated folks.

13 **Q. Like Hendrick?**

14 A. Like Hendrick and Penske, you know, very, very
15 large folks that have quite capable IT staffs on their
16 own separate from the work we do for them.

17 These are not lightly handed out. I mean,
18 particularly for an exemption for a very big customer,
19 they got to come to me and I got to weigh the sales
20 issues. In accounts like this, there's some folks that
21 are just kind of obstinate, and other folks, their
22 excuse is, well, they are really busy. And there's
23 other folks that are the delay kind of folks: Well,
24 yeah, we'll do that but we're really busy right now.
25 We'll talk about it next summer and get it done that we

196

1 **Q. Mr. Brockman, I would like to direct your**
2 **attention to something we were talking about earlier**
3 **today, which is if you go down near the bottom of the**
4 **page where the little letter C is and it says,**
5 **"Communication plan and marketing announcement" under**
6 **number 4, do you see that?**

7 A. Yes.

8 **Q. And I believe when we talked about this earlier**
9 **today, we were talking about the sentence that says,**
10 **"How will the agreement be announced to the market --**
11 **they need to get this identified and understood quickly**
12 **due to the CDK global announcement."**

13 A. Yes.

14 **Q. Do you see that?**

15 A. Um-hum.

16 **Q. I believe it was your testimony, of course we**
17 **can go back and read it, but you were saying that this**
18 **was CDK's issue about the marketing and the**
19 **communication; is that correct?**

20 A. Yes.

21 **Q. And my question to you, then, is what was CDK's**
22 **concern about getting an agreement where you were going**
23 **to either manage jointly a communication to the**
24 **marketplace or that you were going to at least review**
25 **this?**

195

1 constantly have to follow up on. Now we actually
2 review our lists of exemptions now, which makes it a
3 lot easier. Before we had to do a lot of legwork to
4 figure out who was doing what.

5 **Q. So in essence, you're saying that for the large**
6 **customers that might have those types of exemptions,**
7 **they have to be approved by you?**

8 A. Yeah. And the number is steadily falling,
9 especially now that we've got a list.

10 **Q. Would Mr. Schaefer make recommendations to you**
11 **about whether or not an exemption for a large customer**
12 **should be given?**

13 A. Yes. I wouldn't necessarily follow that up. I
14 would talk to Keith Hill.

15 **Q. I'm going to just ask you to go back to**
16 **CX 4037.**

17 MR. COHEN: Bill, could you just tell me what
18 that was or where it was.

19 MR. LANNING: That's the September 11, 2014
20 from Robert Schaefer to Bob. It's the one-pager.

21 MR. COHEN: Okay. Do you know how long ago you
22 guys used it?

23 MR. LANNING: It was this morning.

24 MR. COHEN: Thank you.

25 BY MR. LANNING:

197

1 A. Well, I think the issue is that they wanted to
2 do what they wanted to do. They would much prefer to
3 actually have us agree to what they wanted to do, but I
4 believe in the end we did not agree. In this case
5 here, they went ahead and did it or were going to do it
6 anyway.

7 **Q. But was there an expression of what their**
8 **concern was about having this in relation to their**
9 **announcement of going public?**

10 A. Not that I recall. There probably was, but I
11 wasn't sensitive enough to remember.

12 **Q. And was it related in any way about a concern**
13 **that Reynolds might make an announcement about the**
14 **agreement that CDK didn't like?**

15 A. Well, I think probably that was part of it
16 because if we made the announcement the way we would
17 like, it would be very, very damaging to them.
18 Truthful, but it would be damaging.

19 **Q. What do you mean? What would this statement**
20 **say that might be truthful and damaging to them?**

21 A. Well, the truthful statement would be that they
22 had been hacking into our systems for many years and
23 quite a large number of systems. And I'm sure that
24 would have caused telephones to ring at CDK with
25 customers calling, was I one of the ones, that sort of

<p style="text-align: right;">198</p> <p>1 thing.</p> <p>2 Q. Was there also an element to it that Reynolds</p> <p>3 might take the tack competitively that we were right</p> <p>4 all along on security and now that you are joining us?</p> <p>5 A. I don't know what they were thinking about, but</p> <p>6 that's one of the things they could have been thinking</p> <p>7 about.</p> <p>8 Q. So did you discuss this with Mr. Schaefer?</p> <p>9 A. Not that I recall.</p> <p>10 Q. Was there any discussion that CDK did not in</p> <p>11 advance of its going public want to announce that they</p> <p>12 were changing their position on being open or closed?</p> <p>13 A. Again, I'm not aware of anything like that.</p> <p>14 Q. I have just two more questions on another</p> <p>15 document, which is CX 4273.</p> <p>16 MR. COHEN: Would you mind telling us what that</p> <p>17 is again?</p> <p>18 MR. LANNING: The SIS settlement.</p> <p>19 BY MR. LANNING:</p> <p>20 Q. Could you please turn to CX 4273-003 and go</p> <p>21 down to V, section V or numeral 5 that starts with the</p> <p>22 exception of the wind down period for SIS. Do you see</p> <p>23 that?</p> <p>24 A. Yes.</p> <p>25 Q. I just had one question here. If you go to the</p>	<p style="text-align: right;">200</p> <p>1 to clarify any testimony that you have given over the</p> <p>2 past two days. Do you have any clarifications to make?</p> <p>3 THE WITNESS: No.</p> <p>4 MR. ABRAHAMSEN: Then we will adjourn today's</p> <p>5 session. We will keep the record open. And everybody</p> <p>6 can go to lunch.</p> <p>7 (Whereupon, the proceedings at 1:08 p.m., were</p> <p>8 adjourned.)</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">199</p> <p>1 sentence that's about midway down, and it says, "For</p> <p>2 the avoidance of doubt, the covenants set forth in this</p> <p>3 paragraph 3(a)(v) are not intended as a covenant not to</p> <p>4 compete." Do you see those?</p> <p>5 A. Yes.</p> <p>6 Q. I guess I'm curious, why was this put in the</p> <p>7 SIS agreement?</p> <p>8 A. Well, I would like to be helpful, but frankly,</p> <p>9 I don't know because I wasn't part of the crafting of</p> <p>10 these documents. And just looking at it today, it</p> <p>11 looks to me like it was -- an attorney wanted to put in</p> <p>12 some sort of blanket statement.</p> <p>13 Q. Were you competing with SIS at this time?</p> <p>14 A. SIS is a data extractor where they in bandit</p> <p>15 mode go into a system. We don't do that. We've never</p> <p>16 done that and therefore, we don't compete with them.</p> <p>17 They have that market all to themselves.</p> <p>18 Q. That's why I was curious about why the language</p> <p>19 was in there. If you are not competing with them, why</p> <p>20 are you concerned about it being construed as a</p> <p>21 covenant not to compete?</p> <p>22 A. I have no idea.</p> <p>23 MR. LANNING: Thank you very much. That's it</p> <p>24 for me.</p> <p>25 MR. COHEN: Mr. Brockman, you do have a right</p>	<p style="text-align: right;">201</p> <p>1 CERTIFICATE OF REPORTER</p> <p>2</p> <p>3</p> <p>4 I, Deborah Wehr, do hereby certify that the</p> <p>5 foregoing proceedings were taken by me in stenotype and</p> <p>6 thereafter reduced to typewriting under my supervision;</p> <p>7 that I am neither counsel for, related to, nor employed</p> <p>8 by any of the parties to the action in which these</p> <p>9 proceedings were taken; and further, that I am not a</p> <p>10 relative or employee of any attorney or counsel</p> <p>11 employed by the parties hereto, nor financially or</p> <p>12 otherwise interested in the outcome of the action.</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17 Deborah Wehr, RPR</p> <p>18 Notary Public</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

CDK Global & Reynolds and Reynolds

9/19/2019

[202]

A	169:2,14,21 170:3	after 138:18,22	191:14	anticipated 190:15
a.m 110:19	acknowledgment	aggregation 165:17	allowed 123:9	anybody 138:3
ability 135:21	134:8	aggressively 194:4	126:17 158:23	152:2,14 167:23
able 114:10 129:10	acquired 185:8	agnostic 134:5	allowing 114:7	anymore 131:18
171:3 175:17	acquiring 115:6	ago 148:17 158:12	119:17 122:12	136:7 160:1
182:24	acquisition 115:5	158:13,13 195:21	AMAR 111:15	anyway 187:20
above-entitled	acronym 137:17	agree 135:5,9	amazing 172:5	197:6
110:17	acting 121:25	141:11,19 152:12	ammunition 186:18	app 168:15 174:3,11
Abrahamsen 111:4	action 201:8,12	158:1 165:2 166:9	amount 194:3	174:13
112:4 113:3,15	actions 179:18	166:19 171:13	ample 140:25	appear 175:11
116:8 124:4	active 155:18	197:3,4	amusing 114:23	APPEARANCES
140:15,17,19	actual 145:5 156:12	agreed 126:9 135:2	analysis 189:3,11	111:1
144:23 145:4,25	160:7 181:15	137:9 138:1,13	and/or 151:6	appears 130:13
149:4 155:21	add 183:19	152:9	Anenen 115:16,17	147:9
166:15,23 177:8	addition 123:12	agreeing 184:19	116:13,16,17	applicability 127:17
188:20 200:4	174:20	agreement 112:11	122:24 123:4,11	application 143:25
absolute 138:9	additional 178:24	112:12,13,14	124:7,8 127:16	147:1,14 148:12
absolutely 123:6	address 142:6,12	121:11 125:17,18	160:3 174:20,21	186:10
172:17	182:24	125:18,20 126:1	174:22 175:22	applications 117:17
access 115:5 120:22	addressed 164:20	126:11,13 129:19	176:5,8,15	146:22 147:8
122:7 141:12,13	164:21	131:12 132:19,22	anger 174:13 180:3	148:15,16,23
142:21,21 143:1	addresses 121:17	135:4,7,16,19,25	angered 179:16	150:17 174:6
143:17,20,23	adhere 118:22	136:12 137:2,8,11	angry 173:14	186:24
144:3 146:11,15	adjourn 200:4	137:11 139:6	announce 177:3	applies 152:18
150:12,16 151:6	adjourned 200:8	140:21 143:18	198:11	apply 118:18 151:25
151:23 158:15,24	administration-ty...	144:7,8,24,25	announced 132:20	172:22 189:6
162:1 164:23	159:9	145:1 150:10	196:10	appreciate 115:8
178:13 180:24	admit 134:23	151:8,12,13,14	announcement	119:10 131:21
181:11 182:2,6	adopted 114:6	153:15 154:19	132:18 133:5,7,9	145:22 156:24
accessing 115:3,9	169:25	156:16 157:11	133:21,24 134:2,4	161:8 166:24
120:18 121:9	adopting 124:11	158:23 171:18	134:17,18,20,24	168:21
139:22,24 140:11	170:13	179:13 180:3	135:3,25 162:21	appreciative 157:1
141:24 143:8,24	ADP 116:22 117:8	184:10 196:10,22	196:5,12 197:9,13	approach 122:11
accomplished	118:3 121:10,12	197:14 199:7	197:16	140:5 166:12
154:13	126:1,25 127:5,20	agreements 152:9	announcing 122:16	approaches 113:21
accounting 186:6,15	128:2,18 129:16	154:22 155:2,6,9	132:21	appropriate 158:2
186:21 187:20	130:9 171:23	155:11 157:13	Ansald 113:6	approval 119:6
188:6,16	ADP's 119:6 128:22	159:22 160:5	answer 124:1 125:1	153:9,9 154:1
accounts 138:25	advance 198:11	agrees 149:8 150:1	128:7 137:15	178:22
193:10 194:20	Advantage 131:6,9	ahead 197:5	143:6,13,16	approve 135:9,21
accurate 140:10	advantages 165:6	ahold 116:16	149:24 161:8	approved 195:7
163:21	adverse 179:18	aimed 141:23	173:9 174:1,16	apps 118:14 132:6
accuse 187:14	affiliate 141:20	align 157:23	176:24 182:9	140:22 174:14
achieved 138:10	affiliates 141:11	aligned 158:10	188:10,11	179:10 184:19
acknowledges 151:5	afraid 153:16	159:5	answers 187:9	area 146:15 156:20
acknowledging	166:14	aligning 158:6	anti-hacking 151:10	189:14
	aftermarket 189:4	allow 168:17 181:23	152:1,5	arm 147:1,2

arrangements 121:20	180:24 182:2,5,6 182:15 184:4	138:4 143:23 171:16 182:13 188:1	168:10 175:23 177:10 193:22 196:8,16 197:4	brand 164:18
aside 116:13 156:12 167:17	automatic 181:23	basis 127:21 144:10 146:16	believed 142:7	breach 129:23 151:7 181:9
asked 121:5 123:23 153:14 157:19	automatically 115:7 136:18 166:6	batch 146:12,16,16 146:20 181:16 186:8,15 187:8 188:1	benched 183:13	break 124:5 140:16 140:20 174:2 186:19
asking 149:6 153:14	availability 184:13	batch-type 163:2	beneficial 113:25 114:12 134:7	Briefly 175:25
assign 141:20	available 178:14 182:12 186:3	Bates 114:20 125:6 130:13 137:1 145:2,3 155:25 167:2 180:7 185:1 188:23 192:5	benefit 114:8 139:11 146:19	bring 148:3
assist 142:2 152:14	Avenue 110:14 111:8,17	Batista 125:21,23 126:4,7,13,22 131:14 137:16 138:6 141:10,15 141:19 142:14 143:7,17 144:8 168:14,18	benefits 165:3,13 166:10	bringing 149:2
assistant 149:1	avoidance 199:2	bathrobe 161:1,5	best 116:15 159:16	broad 174:1
associated 182:17 182:20	avoided 180:4	beat 188:6	better 142:10 176:20	broader 145:6
association 176:12	aware 117:22 120:5 126:9,25 127:6,21 127:23 128:5,18 129:16 130:10 131:16 132:7 135:18 140:25 142:15 146:4 155:14,17 156:13 165:22 169:19,24 169:25 173:19 174:10,21 183:2,3 183:5 198:13	becoming 126:25 127:5,21 128:18 129:16 130:10	beyond 121:21 192:12	Brockman 110:21 113:4,10,16 115:16 130:14 137:7 149:5 150:19 155:22 167:3 177:9 185:3 188:24 189:1 192:6,9 194:7 196:1 199:25
assumption 116:21 117:7	B	begins 116:21 119:5 121:4 149:8 151:16,21 153:19 153:21	big 139:17 157:16 161:1 176:11 186:7,14,15 193:4 194:18	Brockman's 145:21
attached 185:22	back 113:8 130:9 149:16 154:13,15 159:23 162:10 171:10 190:16 195:15 196:17	battle 167:16	bigger 187:15	broken 171:8 172:11
attachment 156:3	background 124:18 148:11 183:14	bear 185:17	biggest 120:2	brought 126:6 133:2
attachments 180:8	backing 122:24	bears 167:2 185:1	Bill 195:17	Brown 168:17
attempt 141:12	bad 177:16 189:17	beat 188:6	bills 190:18	build 120:9,25
attempted 138:3 142:21	bandit 191:19 199:14	becoming 126:25 127:5,21 128:18 129:16 130:10	bit 150:22	building 137:23 143:25
attempts 172:20	banned 138:7	beginning 136:4,5 160:14	bite 186:14	built 144:11 179:6 185:20
attendance 113:7	bar 189:11	begins 116:21 119:5 121:4 149:8 151:16,21 153:19 153:21	blanket 199:12	bullet 125:16,19 126:10 130:9 158:15,19 165:2 165:15 166:7,9 184:8
attention 117:5 118:7 119:9 121:7 124:25 148:24 149:6 150:11 160:20 173:14 175:19 196:2	based 116:21 117:7 128:10 138:20 157:5 180:12	behalf 111:3,13 141:10	block 158:18,19 193:9,11	bunch 187:11 192:22
attitude 113:23 118:23 122:10 124:10 152:20	basically 126:15	belabor 157:3	blockage 179:18	business 113:25 114:6 115:4 126:12 129:22 131:18 132:8 139:9,14 143:14 165:23 174:23
attorney 199:11 201:10		belief 128:25 170:7	blocked 172:15	businesspeople 146:1
audiences 156:15		believe 115:12 116:3 119:12 124:9 137:14 144:14 146:7 152:23 156:11,17 158:7 159:21 160:3	blocking 179:10	busy 194:22,24
August 192:6			blue 161:1	button 187:11
AUR 187:23,25			Bob 125:4 133:25 136:14 140:13 145:12 146:5 159:23 160:10 193:25 195:20	
Authenticom 121:10,16,20,22 121:24,25 122:2,7 123:2 132:6 139:24			body 185:14	
authorized 152:13 154:5			book 139:2	
auto 119:25 176:11			bottom 125:13 151:16,22 153:20 196:3	
automated 163:18 163:18 165:7			bought 138:21	
			box 140:7 157:9,22 162:12,13	
			boxes 171:14	

buy 138:21,25 187:15 by-god 179:7 bypass 192:18	136:13,17 140:3 144:16 146:2,23 147:4 148:7,16 150:2,6,16 151:5,8 152:2,2,9,18,19 154:7,19 155:5,5 155:10,15 156:7 156:21 157:23 158:5,9 159:4 162:17,21 164:13 164:19,25,25 165:2 166:9,11 167:6 169:18,20 170:3,24 171:11 171:16 172:6,13 173:5 174:18,20 175:4,6,9,11,19 176:12,15 177:5 179:10,12,14,14 179:21 180:3 184:8,15,18 196:12 197:14,24 198:10	201:4 cetera 131:2 chain 119:25 120:2 change 118:25 121:19 124:1 172:21,22 173:6 changed 113:25 114:6 184:15 changes 171:12,15 172:8 173:22 182:14 189:1 192:18 changing 129:14,20 198:12 characteristic 181:2 characteristics 186:9 characterize 126:21 charged 191:21 charging 131:24 132:3,12,13 charts 189:12 check 168:1 checks 168:11 checkup 121:19 CHERRY 111:24 chests 188:6 Chevrolet 168:17 chief 124:22 choice 163:15,16 chose 163:23,24 164:3 claim 154:11 claims 178:7 clarifications 200:2 clarify 200:1 clause 132:18 141:8 151:4 169:12 171:8 clean 121:12 122:5 122:18 123:2 194:3 cleansing 165:16 cleanup 192:20 clear 115:13 123:6 136:19,21 140:12 159:6 172:5	173:25 174:4 176:21 clearly 118:9,24 139:1 clever 138:7 clients 126:17 148:16 163:15 170:25 172:13 close 148:15 186:2 188:12 closed 114:4 198:12 coach 183:9 code 140:6 coffee 161:2 COHEN 111:14 116:4 123:23 140:15 144:21 145:20 149:1 195:17,21,24 198:16 199:25 cold 136:19,21 collect 138:11 collected 165:8,8 college 183:8 column 157:10 combine 166:6 come 145:11 146:25 155:8 165:24 173:14 175:11 177:2 190:15 194:19 comes 120:17 136:17 161:5 178:22 192:2 comfortable 145:21 comforting 120:7 coming 134:21 139:6 commences 161:3 comments 128:16 Commission 110:1 111:3,7 113:5 commotions 173:12 communicate 155:10 156:15 161:13,22 communicated	133:17,18 communication 132:17 161:24 173:15 196:5,19 196:23 communications 153:1,22,25 155:16 158:4 161:16 178:25 companies 135:5 company 126:22 137:3,16 138:10 141:16 177:23 190:2 compared 131:25 compelled 139:9 compete 142:20 199:4,16,21 competes 138:16 competing 124:20 199:13,19 competitively 198:3 complain 179:17 complainers 190:19 complete 128:11 completely 173:21 191:8 compliance 128:24 150:21 151:2 computer 177:25 183:14 186:3,11 186:14,22 187:3 187:15,18 188:2 conceive 182:8 concern 142:4 179:11 196:22 197:8,12 concerned 129:6 130:2 133:11 140:9 152:20 158:14 159:8 176:19 183:22 184:16,22 185:24 190:8 192:1 199:20 conclude 180:10,12 conditions 152:11
---	--	--	---	--

condoned 191:20 conference 176:23 confession 134:25 confidence 166:5 confusion 115:18 conjunction 166:8 connected 168:12 consent 135:13 consider 124:18 159:18 considered 118:11 151:7 consolidating 182:16 constantly 195:1 constructing 145:15 construed 199:20 consults 145:23 consumed 187:5 consumers 138:19 148:2 consuming 188:1 contact 159:3 162:4 162:8 174:8 contacted 174:6,12 contacts 162:17 164:13 contained 153:15 156:16 157:17 contains 130:17 133:15 contemplated 179:9 content 154:8 context 117:20 continue 123:9 126:17 146:8 163:18 166:8 173:22 continues 131:6 141:9 continuing 165:16 contract 121:10,24 130:23 131:7 146:13,21 148:6 160:12,19 165:13 171:18 contracts 128:2	129:1,24 144:16 145:6,8,10,16,23 146:2 154:9 159:12,14,19 160:8,17 162:2,5 162:18 163:16 164:17,20 170:24 176:8 182:24 contractual 142:20 contractually 143:3 156:19 contravention 138:12 controlled 175:6 convention 176:12 conversation 115:24 116:7 124:6,8,14 136:16 176:2,20 conversations 136:22 175:22,23 176:4,7,14 cool 186:5 cooler 179:22 copies 146:17 copy 149:15 corporation 110:5,8 correct 115:11,12 117:10 125:9,10 130:11,24,25 131:10 137:18,19 139:12 143:9,15 147:21,22 148:8,9 148:18,19 150:4,7 151:10 158:25 163:22 164:1 169:2 170:22 171:5 172:17 180:5,15,16 182:3 196:19 correctly 120:15 172:16 cost 193:9,10 costing 114:2 counsel 113:4 201:7 201:10 counterpart 175:20 country 120:3	couple 147:7 148:17 157:4 190:17 course 120:1 173:19 183:10 187:13 196:16 court 125:23 126:3 126:4 137:4 covenant 141:11,19 142:19 199:3,21 covenants 142:19 143:10 199:2 cover 156:6 180:21 covered 152:6 crafting 199:9 Crain 193:4 crazy 179:5 create 186:7 189:11 created 138:9,10 creates 147:17 creating 181:16 190:6 creation 178:24 crosses 181:11 crutch 166:25 168:22 cup 161:2 curious 175:20 179:8 199:6,18 current 192:21 currently 131:24 181:19 customer 120:1 139:17,18,20 172:7 189:25 190:1 193:4,10,15 194:18 195:11 customers 119:25 121:18 139:3,4,17 164:9 171:23 173:4,5 178:16,20 188:12 193:3 194:9,11 195:6 197:25 cut 145:19 CX 112:8,9,10,11,12 112:13,14,15,16 112:17,18,19,20	114:19,20 115:13 116:3,10,18,25 117:22 124:5 125:6,6,12 126:25 130:12,13 136:25 137:1,8,12 140:21 141:6 144:23,24 145:2,2,3 146:6,7 146:22 147:9,13 147:23 148:11,20 150:9,12,20,24 151:13,17 152:25 155:23,24 156:1,5 157:8 162:11,12 164:12 167:2,2,9 168:24 180:7,7 183:25 185:1,1,15 188:22,22 191:12 192:4,5,11 195:16 198:15,20 <hr/> D <hr/> D 112:1 113:1 D.C 110:15 111:9,19 193:5 dabrahamsen@ft... 111:11 damaging 197:17,18 197:20 Dana 111:4 149:1 DARCARS 193:4 Darwin 138:14,16 138:25 Dash 117:1 dashes 131:5 data 112:14 114:16 121:17 128:3 129:2 130:4 138:11 142:22,22 143:24 144:10,24 147:4,20,22 148:7 151:13 163:2,5,13 163:18,20 164:23 165:4,7,16 166:2 166:10 169:3,3,4,8 169:19,21,22 171:17 180:23	181:9,16,19,21 182:10,11,13,16 184:4,5,9,15 187:11 190:7,25 190:25 193:22 199:14 database 146:15 date 118:9 179:7 date-wise 160:13 dated 130:15 156:2 159:11 185:2 189:21 192:5 dates 178:22 192:17 day 128:13 136:20 136:21 137:10 138:15 161:3 163:7 165:11 169:10 181:14 188:7 days 159:13 162:8 179:9 180:23 200:2 Dayton 161:12 de-duplication 166:1 de-winterizing 148:4 deadline 190:15,16 deal 112:16 132:9 133:6 139:8 167:6 175:15 189:5 190:22 191:6 dealer 120:2 163:3 163:13 168:15 181:5,20 dealers 114:4 171:21 176:11 177:12 179:16 dealers' 158:16 165:3 166:10 179:14 dealership 147:18 163:12 164:9 165:9 169:9 178:4 178:9,15 181:17 188:14 189:13 dealership's 168:16
--	---	--	--	---

182:12 dealerships 119:25 178:19 deals 189:5,10 191:3 dealt 162:18 164:18 Deborah 110:25 201:4,17 decades 115:4 deception 144:13,14 decertification 177:15,19 decertified 178:17 decided 138:21 decides 181:20 deciding 131:17 183:11 declare 114:10 124:2 168:1 deep 123:17 130:5 deeply 120:23 122:21 defective 144:12 187:14 defense 187:16,16 defined 117:13 definitely 191:20 definition 128:11 150:12,13,15 definitions 129:1,25 delay 194:23 deliver 125:8 department 135:19 145:15,18 186:6 186:21 187:20 189:16 193:24 departments 188:5 describe 129:22 160:25 described 148:14 describing 117:15 118:10 description 112:7 140:10 desirable 192:19 desired 178:23 desk 136:5,6 161:3 detach 160:14	detaching 159:21 detail 138:3 details 154:8 160:16 191:25 detect 166:4 168:6,9 168:17 developed 119:7 development 185:4 185:11 devised 187:2 differed 113:22 different 113:20 119:2 123:24 139:23 140:1 143:1 185:25 186:4,8 191:19 193:12 difficulty 149:5 187:24 diligent 135:20 165:11 dipstick 187:3,4 direct 117:5 132:14 150:11,16 161:17 161:19 183:18,19 185:5 196:1 directed 162:24 180:4 direction 130:20 directions 150:23 directly 138:12 dirty 179:3 disagree 159:7 disagreed 127:18 disappointing 175:16 disastrous 177:18 179:23 disclaim 154:11 discuss 198:8 discussed 115:24 116:1 123:4 127:14 133:13 192:14 discussing 130:19 discussion 146:4 149:3 198:10	discussions 158:8 160:10 dismissed 175:3 disposition 126:8 disrupt 172:12 disrupted 173:8,16 174:7 disruption 174:13 179:13 dissemination 153:21 dividing 181:2 DMI 139:24 142:10 162:22 163:15 164:16 165:15,17 166:7 182:1 184:1 DMS 114:5 120:18 124:11 128:6 129:3 130:5 137:24 139:22 140:11 141:13,16 141:22,24 142:23 143:2,8,11,14,17 143:20 144:3 146:23 151:23 158:15,16,24 164:24 165:3,19 166:10,13 167:16 167:17,22 168:8 168:16 169:1,3,4 169:13,15,16,19 169:22,24 170:4,5 170:11,15 177:11 177:11,12,16,20 177:21 178:4,13 182:6 185:19 187:14 193:12 DMSes 114:5 131:9 141:24 147:5 148:7 179:15 182:2 document 114:18 125:5 127:14 137:6,7,9 146:10 150:18 153:12 154:16 156:8,10 156:12,14,25	157:5 159:11,13 166:20 167:3,4 168:22 180:17 183:1 188:25 198:15 documented 117:13 120:11 documents 128:1 133:19,22 140:6 154:4,25 155:15 161:21 199:10 DocuPad 138:17 dog 161:2 doing 114:13 121:11 121:22 122:3 124:16 126:16 129:25 131:18 137:20 138:12 141:2,4 142:13,14 156:21 159:6 169:1,13 170:7,8 170:10 182:1 185:11 187:20 189:13,15 195:4 dollars 114:2 double 168:11 doubt 199:2 downs 171:20 draft 156:14 166:21 drafted 154:25 159:22 drafting 154:10 156:7 160:16 dragging 190:11,12 draw 148:24 drawback 138:20 driving 161:7 DSV 193:19,21 due 196:12 duly 113:12 dupes 166:4 duplicate 166:1 dying 190:9 <hr/> E <hr/> E 112:1 113:1,1 148:21,25 149:8	149:20 e-mail 112:8,9,10,15 112:17,18,19,20 115:10,14,15,15 115:15,17 116:14 117:18,22 118:24 120:22 130:14 133:14 156:1,3,6 160:2 161:22 180:8,21 185:2,14 188:23 189:19,20 189:22 191:11 192:5,9 193:17 e-mailing 122:17 e-mails 160:18 181:5 192:7 Eagle 188:25 189:1 189:2,9,22,25 191:14,14,15 192:11,15,22 earlier 143:13 153:7 159:16,17 160:2 162:19 174:16 196:2,8 early 125:16 136:9 139:6 160:4 earth 145:24 easier 195:3 ECONOMIST 111:6 economy 144:18 effect 174:18 effort 143:3 154:14 180:20 efforts 122:23 eight 159:13 177:1 either 138:21 144:11 153:22 163:17 178:18 196:23 elected 164:8 electronically 190:23 element 198:2 EMMANUAL 111:25 employed 201:7,11
--	--	--	--	---

employee 168:1,18 201:10 employees 141:11 encouraging 148:3 end-of-month 186:7 ends 171:7 enemies 176:1 engaged 159:18 160:7,17 enhancements 173:17 191:13 ensure 157:23 159:4 ensuring 158:9 enter 187:10 entered 139:5 153:8 154:22 entering 165:19 enthusiasm 133:23 entitled 137:1 156:5 167:6 170:17 entity 143:19,21,22 143:23 144:1,2,6 entries 146:12 entry 187:11 equation 165:14 ERA 192:13 especially 189:3 195:9 ESQUIRE 111:4,5 111:14,15 essence 195:5 essentially 143:22 144:7 establishment 167:21 estimate 162:3,6 estimation 159:16 et 131:2 eventual 116:7 everybody 188:9 193:16 200:5 evidence 141:1 evidently 119:23 193:5 exact 174:17 exactly 115:25 128:3 130:6	133:17 135:18 137:20,25 140:12 157:16 159:6 161:7 168:20 186:2 examination 112:3 113:4,11,14 examined 113:12 example 167:21 193:8 exception 193:1,6 198:22 exceptions 192:23 193:2 exchange 112:14 144:24 151:13 160:2 exchanges 155:14 exclude 145:17 excuse 117:3 194:22 executed 144:16 executes 189:22 executive 124:23 185:4 executives 137:13 exemption 187:23 194:18 195:11 exemptions 192:12 192:13,13 194:8,9 195:2,6 exhibit 112:7 114:21 115:1,13,14,23 116:20 121:5 125:6,12 130:17 144:25 148:11,14 150:9 155:24 162:10 167:9 180:6 183:25 184:25 188:21,23 189:20 192:10 193:18 exhibited 190:12 exhibits 144:15 150:9 exist 133:12 176:18 existed 127:9 existence 127:7	128:21 129:4 existing 163:14 exists 182:9 expect 118:14 140:13 expectation 180:1 expectations 159:25 experienced 161:14 explaining 120:15 explanation 157:3 185:18 explicit 129:2 145:19 exploit 172:20 exploring 155:15 expression 197:7 extend 143:11,13 184:18 extended 138:22 extensive 161:16 extent 114:11 145:14 176:14 185:24 extract 146:12 181:21 extracted 128:3 184:6 extracting 171:17 181:19 extraction 184:4 extractor 199:14	factory 178:25 facts 189:6 failure 165:14 fair 163:10 fairly 122:1 138:24 166:3 187:6 faithfully 181:14 falling 195:8 familiar 140:7 154:3 154:9 156:7 157:2 157:6 far 116:1 121:20 123:17 124:24 128:24 129:5 130:1 131:12 132:3 133:10 136:2 140:9 142:9 154:8 157:9 158:13 159:8 163:12 171:16 176:18,24 178:24 179:5 183:21 184:15,21 185:23 190:8,25 fashion 163:19 165:7 fastest 169:2 favor 135:24 favorable 134:13,13 134:14,16 fear 152:6 179:15 February 130:23 154:17,18 156:2 158:5,12,12 159:11,13,17 160:5 167:7 169:17 fed 143:24 Federal 110:1 111:3 111:7 113:5 feeling 184:15 feelings 188:17 feels 136:15 feet 190:11,12 felt 135:15 field 179:7 fields 129:2	figure 182:4 195:4 figured 190:20 file 110:5 146:18,18 168:2,13 189:8 final 126:8 135:4,18 136:17 159:22 160:12 finally 124:15 131:15 169:1,13 170:3 171:13 172:1 191:7 finance 188:14 189:10,15 financially 201:11 financing 189:4 find 114:22 124:22 157:10 173:23 finding 149:10 fine 163:6 190:9 191:2 finished 154:6 159:15 firm 153:9 firms 182:1 first 114:25 115:2 115:14,15,17,23 116:17,19,20 117:6 118:2,17 121:3 125:19 126:6,10 131:4 132:18 138:15 141:7,8 146:10 148:10,24 150:20 150:25 151:5 157:9 158:19 162:12,16 166:22 167:14,15 169:12 170:2 185:15,15 189:19,21 191:12 192:9,10 193:18 five 177:1 186:12 fix 178:10,11 fixed 178:9 flashing 181:18 flip 148:10 183:24 flipping 147:23 focused 192:24
--	---	---	--	---

focusing 184:21 folder 189:8 folks 133:1,2 140:3 175:16 186:12 188:6,17 193:6 194:12,15,20,21 194:23,23 follow 119:11 192:7 195:1,13 follow-up 121:17 followed 124:6 173:25 176:15 following 130:20 147:11 171:2 174:5,12 follows 113:13 fools 114:10 football 183:9,11 footnote 191:10,11 191:13 force 127:20 129:12 155:16 172:7 forced 122:23 193:2 forcing 187:15 Ford 177:23 178:14 foregoing 201:5 forever 138:8 141:25 180:1 forget 174:17 formal 129:9,11 forms 161:24 173:15 forth 142:19 199:2 forward 144:20 170:4 190:4 191:8 forwarded 164:25 four 130:17 158:12 177:1 fourth 165:2 166:9 franchise 177:12 frankly 154:4,23 156:11 190:11 194:12 199:8 fraud 138:9 144:13 144:14 frees 186:11 frequently 162:4	friends 176:1 front 116:4 137:5 144:21 153:12 162:11 full 172:7 fully 178:18 fund 175:16 funds 175:7,7 further 141:19 142:17,25 148:13 156:19 201:9 furthest 134:10 <hr/> G G 113:1 gain 153:9 gaining 144:3 general 124:18 152:8 156:20 generally 132:11 gentle 122:1 gentleman 175:2 getting 118:9 126:11 138:2 147:20 148:7 150:16 152:20 163:12 168:7 181:24 184:6 186:13 190:6 192:24 196:22 give 135:20 157:19 159:16 160:6 162:3,6 170:21 179:2 190:14 193:1,2 194:9 given 133:3,22 135:23 136:11 168:14 195:12 200:1 gives 137:4 global 110:4 196:12 go 116:4 117:12,17 118:6,14 131:22 144:17,20 147:7 149:16 163:19,23 163:24 164:3,3,19 168:1 173:22	189:11 190:4,10 190:15 192:12 195:15 196:3,17 198:20,25 199:15 200:6 goes 131:20 141:22 171:10 181:8 186:19 going 117:5 118:22 120:20,21,25 122:11 123:2,9,14 123:21,25 124:1,9 124:11 125:23,24 126:3 128:16 129:2,9,10 132:13 132:25 134:8,12 134:21 136:3 143:1 144:4 146:23 148:21 149:22 150:10 151:13,15 153:23 156:24 160:11 161:8,10 162:22 163:9,17 170:24 171:3,14,15 172:1 172:2 174:2 176:3 179:1,2,25 180:19 184:23 190:17 195:15 196:22,24 197:5,9 198:11 good 113:16,17 136:18,19,23 164:4 178:12 180:11 183:22 187:16 189:17 192:2 gotten 138:24 graphs 189:12 grease 181:25 greater 138:3 group 175:7 groups 119:25 guess 137:10 199:6 gun 186:17 guts 183:16 guy 176:13 178:12 guys 178:11 179:3	188:7 195:22 <hr/> H habit 194:8 hack 122:12 152:12 152:14 184:24 hacker 121:25 142:9 173:23 hackers 134:25,25 152:20 167:18 194:10 hacking 114:2 125:24 128:5 154:7 162:23 165:20 171:14 197:22 Hampton 110:13 111:16 handed 194:17 handle 185:25 handled 135:18 163:3 177:25 handles 138:17 hands 130:5 175:25 181:24 184:6 hands-off 163:9 hanging 166:24 hangover 192:19 happen 132:25 135:11 163:9 172:1 191:3 happened 159:21 164:22,24 173:2,7 173:20 190:24 happening 128:5 131:14 152:8 156:20 160:13 190:3 191:1 192:15,20 194:1 happens 135:14 166:6 176:25 181:12 186:21 187:3 happy 133:11 hard 116:16 187:1 hash 116:20 119:5 126:24 127:3	130:7 183:25 184:1,2 hate 187:10 hated 139:8 heading 167:11 heads 179:22 heard 120:16 128:8 167:23 hearing 110:18 hedge 175:7,7,16 hello 176:13 help 152:3,14 168:6 helpful 199:8 Hendrick 192:12 194:13,14 hereto 201:11 Heritage 193:4 high 183:8,10 187:6 higher 131:23,24 hill 122:25 180:15 183:6 195:14 hinting 120:18 historically 179:24 hit 149:17 187:11 hold 175:8,14 holding 171:12 hollers 172:23 holy 115:7 home 160:23,24 hope 135:19 185:17 hopefully 172:24 hopes 179:20 hostile 148:23 150:1 151:8 191:15,16 191:17,18,19 hostilely 150:5 hour 169:10 hourly 140:16 Houston 161:12 huge 132:9 194:4 humorous 124:22 hundred 158:13 <hr/> I ID 167:22,25 168:7 168:10,12,13,15 idea 113:21 136:23
---	--	--	---	---

160:6 164:2 194:7 199:22 identification 170:25 178:6 identified 196:11 idiots 114:11 immediately 172:10 impact 191:3 impatient 175:9 impending 172:8 implemented 179:6 importance 114:16 important 125:22 133:21 147:19 163:1 170:17 178:15 impression 133:19 135:23 136:11 140:4 146:24 improved 173:22 175:13 improvement 175:10 inappropriate 175:3 include 165:18 170:13 included 165:24 including 148:14 incorrect 181:7 indented 116:19 117:6 119:4 121:3 indicated 157:22 indicates 137:9 indication 152:18 188:2 indirect 150:16 individuals 189:18 indulgence 180:19 industry 176:23 infer 132:2 inferior 124:19 infinite 186:17 inflict 182:7 influence 177:20 informally 176:23 information 112:16 132:2 152:3 161:7	164:4 167:6,25 182:19 189:5 inherent 184:3,5 initiative 177:24 inoperative 171:16 input 159:25 inquiry 157:14 inside 146:15 154:9 167:22 175:11 178:25 194:4 insight 128:22 instance 147:9 178:8 180:2 193:3 instant 178:6 188:13 instructions 169:8 183:4 IntegraLink 139:24 142:10 182:1 184:2 integrate 124:13 131:9 132:6 141:12,12 164:16 integrated 137:3,17 146:23 integrating 134:6 140:22 141:16 150:5 171:1 179:15 integration 117:9,12 118:3 123:8,13,16 124:10 126:16,18 131:11 132:13 141:21 151:9 166:13 184:20 integrator 168:7 172:14 integrators 122:19 132:12 148:23 150:1 170:14 integrity 142:23 Intel 175:2,3 intend 172:12 intended 142:19,21 143:11 151:25 199:3 intentionally 145:19 interacting 127:19	interaction 146:19 176:10 interactions 137:21 interested 118:8 122:18 201:12 interesting 183:7 interestingly 188:4 interface 112:13 120:12 121:1 138:13 145:1 150:10 178:4 189:9,23,23 190:7 190:21 191:8,15 191:16,18,18,22 192:16 interfaces 137:25 152:10,13 interpret 117:10 118:4 119:15 120:22 121:13 172:12 180:20 181:1 184:5,11,12 184:18 interpretation 119:21 122:8 165:1 169:15 170:6,21 171:9 181:4 interpreted 117:14 164:14 interpreting 120:15 131:21 172:15 inventories 146:14 inventory 146:12 147:22 182:16 investigational 110:18 invoices 186:24,25 involved 127:1 138:2 146:2 154:5 154:10 190:6 involves 190:5 issue 115:19 122:24 132:21,24 133:3 134:1 153:10 163:6 187:1 190:22 196:18	197:1 issues 159:9 160:17 160:19 182:24 194:20 <hr/> J <hr/> Japanese 137:22 job 154:12 175:4 181:16 joining 198:4 joint 134:1 135:10 jointly 196:23 JON 111:25 July 125:9 131:7 137:13 160:4,18 160:18 June 115:16 116:13 160:4 <hr/> K <hr/> keep 146:14 200:5 keeping 167:17 Keith 180:15 183:6 195:14 kept 114:12 189:8 key 165:9 167:11,14 168:24 kick 178:11 killed 138:4,5 143:4 killer 149:12 kind 120:14,18 129:8 132:25 133:1 135:12 145:17 159:9,15 163:2,8 168:2 172:5 176:25 178:1 179:21 186:2 192:25 194:21,23 knew 191:20 know 116:23 118:7 120:23 122:22 126:6 127:13 131:12,20 132:1,4 132:5,25 133:22 134:3 140:14 141:2 143:25	144:1 145:14 154:15,15 155:4,7 156:20 157:24 158:16 161:21 164:5,17,20 168:2 168:5,23 171:22 171:23,23 172:6 172:10,21,23,24 173:1,9,10,11 175:13 176:24 182:9,18 183:11 191:25,25 194:14 195:21 198:5 199:9 know-how 141:21 142:3,5 knowledge 128:20 129:6 132:14 142:9 151:22 154:11 155:3 157:13 158:2 172:19 182:22 184:13 known 119:23 120:19 knows 161:15 181:15 187:4 <hr/> L <hr/> labeled 114:19 lack 133:23 laissez-faire 113:23 118:23 119:17 122:10 123:15 124:10 129:21,22 152:19 166:12 184:16 landing 118:12 language 199:18 Lanning 111:5 113:5 194:6 195:19,23,25 198:18,19 199:23 large 119:24,25 138:25 194:11,15 195:5,11 197:23 larger 178:19
--	--	--	--	---

largest 120:1	149:20 153:20	120:9 141:7 151:4	159:5 184:10	mentally 154:24
late 160:4 179:1	list 116:6 146:11	152:25 189:16	196:10 199:17	mentioned 114:1
latest 191:13	172:6 178:12	199:10	marketing 132:17	125:1 137:15
law 128:24	192:25 195:9	looks 120:11 129:8	132:25 133:5	138:19 140:23,24
laws 127:1,6,12,17	listening 145:20	131:15 199:11	134:2,23 146:25	143:16 174:16
127:21,24 128:19	listing 129:2	loose 171:15 172:1	147:1,2,3,4,19	179:8
128:23 129:17	lists 195:2	lost 125:23 150:22	196:5,18	Menu 131:5,9
130:10	literally 190:17	153:16	marketplace 196:24	message 155:10
lawyer 144:12	little 131:2 150:22	lot 118:7 136:4	marks 184:1	157:23 158:10
lawyers 145:23	153:16 185:19	178:20 179:13	Martin 156:2	159:5 167:14
lay 143:3,6,7	187:1,24 196:4	183:20 194:12	material 151:7	187:19
laying 120:12	live 160:23,24	195:3,3	math 183:8	Messages 167:12
192:23	LLC 110:13 111:16	luck 188:8	mathematician	168:24
leading 155:9	load 186:17	lunch 200:6	183:7	messaging 158:6
leads 187:13	located 160:22		mathematics 183:13	messy 130:1
learn 161:6	logic 187:1	M	matter 110:3,17	MICHAEL 111:6
learned 124:15	long 131:4 141:8	machine 186:17	133:20 156:5	111:14
125:2	143:14 149:18,22	machines 171:17	175:18 176:10	middle 147:14
led 124:9 167:15,19	149:23 161:14	magnitude-wise	190:11	189:19 191:12
left 190:22	167:15 190:2	164:2	mature 128:14	midway 199:1
legal 135:19 145:14	192:16 195:21	maintains 147:18	190:2	migrating 170:8
145:18,23	long-standing 159:1	major 138:19	mcohen@sheppar...	mile 121:19
legally 128:25	longer 118:22 124:9	173:21 183:8	111:21	milepost 160:5
legwork 195:3	124:12 125:23	193:2,10	mean 117:10,14	millions 114:2
let's 178:3	134:5,8 162:22	making 119:18	118:21 119:15	mind 134:11 182:5
letter 123:7,18	176:12 184:16	120:14 178:14	121:14 127:5	198:16
196:4	longest 130:18	manage 196:23	134:24 135:1	minimal 145:9
letters 173:15	174:24	management 183:21	138:9 139:1,11	minimums 131:2
letting 166:25	look 114:18,19	manager 189:15	143:7 172:12	minor 132:8 169:24
liabilities 127:1	116:18 125:5,11	managers 188:15,15	184:11,12 188:18	minute 186:3
129:16,17,17	130:12 136:25	manner 138:23	193:11 194:17	minutes 123:24
130:3,10 182:20	141:5 146:6,7	193:5	197:19	miserable 139:8
liability 130:1 181:4	148:17,20 150:8	manually 163:20	meaning 118:5	misinterpreted
181:24 182:7,17	150:19 151:14	manufacturers	171:8	170:23
life 143:11 160:25	152:24 153:18	137:22	means 134:12	misnomer 191:17
182:10	154:13 155:24	March 137:10	135:11 136:18	missed 144:12
light 136:20,21	156:1 162:11	173:17 174:5,12	181:8 183:14	190:16
152:22	167:1,10,25	179:2 183:3	185:21 186:23	missing 166:14
lightly 194:17	168:21 178:11	189:21	meant 129:20	mission 154:13
lights 181:18	180:6 184:25	mark 116:20 119:5	145:17	mode 199:15
likes 182:20	188:22 190:3	126:24 127:3	measures 167:19	month 165:12
Lime 117:9,12 118:3	192:4,21	130:7 184:1,2	media 157:10,14,20	181:15 186:16
147:3,4,10,16	looked 125:25	marked 125:6	159:3	189:10 191:2
line 118:8,17 157:3	129:14 160:2	155:23 188:21	meet 119:11 175:23	morning 113:16,17
158:25 180:9	162:19 176:9	market 132:20,22	176:22 178:23	161:1 195:23
181:11	191:1	153:22,25 155:11	179:5	Motor 177:23
lines 148:25 149:7	looking 116:23	157:23 158:6,10	meeting 125:9	move 126:18 131:17

160:14 169:2,21 170:4 191:7,23 193:12 moved 152:19 154:24 155:19 moving 119:16 122:9 166:11 193:20 Mullin 110:13 111:16 multi-user 185:20 multiple 178:1	negotiated 130:21 162:3 negotiating 125:17 146:2 negotiation 159:19 negotiations 160:8 160:12 neither 201:7 never 124:14 176:17 190:24 199:15 never-neverland 178:17 new 127:10,11 139:5 149:17 155:24 162:17 164:13,14 164:18,22 171:4 172:23 175:4 177:24 178:2,3,3 178:14 190:6,14 news 127:8,10 next-to-the-last 114:22,25 nice 176:13 189:11 190:18 night 188:3 nights 179:4 noise 193:13,14 non-approved 150:12 151:5,6 noontime 161:4 Notary 201:18 Note 170:18 noted 174:17 notes 125:8 notice 110:18 122:16 noticed 135:4 Notification 191:6 notified 171:11 notion 123:1 134:4 November 185:2 188:24 NPPI 182:19 number 115:8 130:18 147:9,14 147:23 163:10 164:5,7,8 171:8,12	174:18 178:6 182:18 195:8 196:6 197:23 numbered 130:18 147:13 167:10 168:25 170:2 numbers 191:4 numeral 198:21	one-sided 135:20 ones 122:3 127:13 127:14 130:3 134:11 141:2 165:25 176:5 177:22 197:25 ongoing 144:10 open 198:12 200:5 opening 180:1 operate 118:20 operating 129:24 185:19,20,23,24 operational 142:22 operationally 124:24 operations 175:10 operator 120:2 opposed 133:6 138:12 164:10 179:23 189:15 order 153:10 159:24 171:22 177:11 orderly 125:25 126:20 162:20 171:19 orders 186:25 organization 174:9 organizational 161:17 organized 128:1 originally 185:9 ought 128:12 149:17 outcome 201:12 outlets 157:10 outside 181:17 overall 189:16 overloaded 187:18	137:8 141:5 147:14,24 148:10 148:21 150:20,25 151:18,22 153:19 153:20 157:9 167:8 183:24 185:15 189:20 191:12 192:10 193:18 196:4 pages 146:9 147:8 180:8 paid 118:7 paperwork 189:7 190:23 paragraph 114:22 114:25 116:19 117:6,6,11 118:17 118:19 119:4,10 119:21 121:2,2,3,6 121:8 125:13 130:17 131:1 132:16,19 141:6,8 142:6,12,18 143:2 144:12 147:13 148:12,21,22 149:11,17,23 150:21 151:16,21 151:25 152:7,17 152:24,25 153:2,3 168:25 170:2,17 170:19,22 192:11 199:3 paragraphs 130:18 167:10,11 180:13 parameters 118:21 parenthetical 141:9 148:13 part 116:19 118:12 120:24 125:22 135:2 138:8,21 146:10,13,21 147:19 151:14 171:21 175:19 197:15 199:9 particular 118:8 129:13 154:12 166:20 180:2
<hr/> N <hr/> N 112:1 113:1 N.W 110:14 111:8 111:17 NADA 127:15 175:24,25 176:25 NAIK 111:15 Naked 117:9,12 118:3 147:3,4,10 147:16 name 143:19,21 144:1 168:13,13 182:18 names 121:17 127:13 171:25 175:1 Nation 120:1 national 176:11 nature 131:16 139:3 near 196:3 necessarily 142:16 195:13 necessary 159:25 161:13 necessity 185:18 need 119:11 121:12 122:5,6 149:16 170:4 177:10 183:23 188:12,15 188:17 196:11 needed 118:11 122:17 143:24 160:20 162:25 needling 194:2		<hr/> O <hr/> O 113:1 oath 113:18 objected 123:25 obsolete 191:22 obstinate 194:21 obvious 165:6,25 184:14 obviously 119:1 144:18 161:21 169:17 occasion 165:24 176:22 183:5 Occasionally 161:25 occur 175:17 179:23 181:23 oddball 192:1,2 OEM 177:17 OEMs 174:3,6 177:10,20 179:16 179:17,17 180:4 offering 162:23 office 160:22 officers 124:23 Ohio 161:12 oil 121:18 okay 149:21 151:1,4 151:18,20 158:18 158:21 178:25 187:4 195:21 old 175:25 176:1 178:2 190:7,9 191:8 once 123:25 136:5 139:7 162:8,8 163:15 171:2,18 one-pager 156:7 195:20	<hr/> P <hr/> P 113:1 P.A 111:14 p.m 200:7 packs 177:1 page 112:3,7 114:25 115:2,14,23 116:17,19 117:3 121:3 125:12,13	

190:20 particularly 190:5 194:18 parties 114:8 118:23 119:17 120:18 122:11,12 123:15 124:12 134:6 135:13 142:1,2,5 142:11 153:8 163:11 169:3 171:24 172:11 201:8,11 partnered 184:9 parts 186:24 party 118:4,5,18,20 130:4 141:20 146:11 153:23 154:1 163:5 164:10,23 165:10 167:17 181:6 189:2 192:12 password 168:7,10 168:15 pay 124:25 131:25 132:9 175:19 190:18 paying 131:23,25 132:5 payments 138:20 payroll 167:24 168:2,13 181:19 188:8 PC 163:4 181:22 PCs 185:22 peaceful 171:10 Pennsylvania 110:14 111:8,17 Penske 194:14 people 117:20,20,24 125:2 129:12 142:13 156:14 158:23 161:23 168:12 172:2 173:8,16 176:25 177:2 186:6,13,23 187:17 188:13,14 190:18	perceive 182:11 perceived 122:14 perceiving 123:17 percent 175:8 184:10 187:5,5,5 perception 155:12 perfectly 181:6 190:8 perform 169:7 period 116:13 126:18 139:12 154:19 155:9 158:5 159:17 160:7,18 162:2,20 169:17 173:18 174:5,12 183:3 185:12 198:22 periodic 160:9 permissions 122:3 permit 124:12 170:14 person 116:16 161:14 183:7,15 189:15 personal 182:19 personally 117:19 132:7 144:1 154:9 174:8,15 personnel 165:14 183:9,21 Phil 125:23 126:11 131:14,14 138:6 140:2 142:7,14 144:8 168:18 philosophy 114:1 phone 173:15 176:5 176:17 phrase 140:6,7 169:4 174:17 180:23 physical 156:12 161:9 piece 132:8 154:12 178:3 pieces 166:2 178:1,2 178:3 PII 182:19	pile 136:5,6 187:9 piles 136:7 place 126:1,6 131:17 162:1 176:2 179:19 193:1 plan 132:17 196:5 planning 183:9 plans 137:23 platform 134:6 play 183:12 188:5 played 145:15 please 198:20 plunge 145:5 pocket 130:5 point 115:3,8 117:22 119:9,14 120:14 121:6 122:15 129:7 133:3 136:1 136:6,7 144:13 152:17 163:1,4 166:14 172:25 173:2 181:20 192:24 pointed 152:2 194:1 pointing 121:9 122:1 points 116:6 182:23 policies 177:21 policy 159:1 184:17 pool 179:3 populate 182:10 position 114:15 119:16,17 120:17 120:21 158:22 159:2 169:19 170:13 183:12 184:23 198:12 positions 129:21 possibility 179:20 possible 136:21 possibly 136:16 177:5 193:12 postcard 132:10 power 144:7 186:3 186:11,14,23 188:5 193:9 practical 141:3	practice 114:6,6,7 186:21 194:8 precede 193:13 predates 190:1 193:7 prefer 197:2 preference 134:19 preparation 154:5 prepared 125:8 190:21 prepares 148:1 presence 166:4 present 111:23 113:6 presentation 138:18 president 175:2 180:11,14 press 135:2,5 153:10 153:22,24 154:20 155:1,6 presumably 180:4 pretty 122:23 128:11 163:11 180:11 184:14 186:1,5 187:16 194:12 prevail 179:22 previous 129:20 previously 113:12 price 131:23,24 132:5 prices 132:3 pricing 131:1 principally 159:23 principle 183:16 print 130:16 164:9 printing 165:9 prior 117:17 125:1 127:25 128:7 130:9 136:20 137:15 143:16 153:21 171:11 175:5 privilege 145:22 probably 124:17 125:4 128:4 133:16,16 136:1	149:11 160:9 162:7 165:25 166:3,16 174:23 174:24 175:19 177:22 185:10 187:7 191:21 192:17 197:10,15 problem 150:24 156:23 181:9,10 181:22 proceeding 159:24 proceedings 200:7 201:5,9 process 117:15 118:10 119:11 120:5,8,12 129:9 129:11 136:9 138:22 155:18 165:25 171:11 182:15 189:23 190:4,9,10 192:16 processes 117:13 produced 127:15 product 138:14 143:12 144:11 products 138:18,18 179:14 profit 175:15 profit-producing 188:14 profits 175:10 program 117:23 125:2 126:19 127:8 128:22 133:5 146:17 163:17 169:7,11 184:13 programmers 133:1 179:4 programming 190:6 programs 148:13 186:16 187:8 189:11 prohibited 151:6 prohibition 141:15 141:23 143:7 151:8,22
---	---	---	--	---

prohibits 148:22 150:5	purpose 153:1	raise 188:6	191:13	142:5 145:8 155:4
project 122:22 123:19 154:6,24 155:13 156:18 159:9,16 160:15	pursuant 110:18	ran 137:16	receives 171:2	162:5 170:10
promised 156:22	pursued 165:23	rank 182:18	receiving 117:17	174:11,13
properly 194:2	push 169:3,4,22 184:9	RCI 126:19 131:1 132:12 138:7,10 144:5,7,8 151:7 152:10 158:23 163:17,19,24,24 164:3,3,11 169:5,6 169:10 184:19 190:1,4,21 191:9 191:23 193:6,7	recess 124:3 140:18 155:20 177:7 188:19	regarding 141:21 177:24
propound 153:3	put 115:7 130:8 144:19 154:21 171:3 173:6 181:21 199:6,11	re-read 166:15	recitation 166:11	reiterate 153:17
protect 142:21 171:3	Putting 156:12	reach 180:2	recite 175:1	related 197:12 201:7
protecting 172:14 173:3,5	Q	reached 125:20 126:10 143:18	recognize 177:2	relation 197:8
provide 117:9 118:3 121:16 152:10 165:16 166:8 170:24	qualities 131:16	reaching 160:12	recollection 116:2	relations 193:10
provided 119:24 168:9	question 114:17 117:4 121:5,15 123:20,21,23 137:10 145:6,17 149:24 153:3 155:5 161:8,10 162:16 166:16 174:1,1 196:21 198:25	read 117:21 133:19 149:19,22,24 153:2 166:8,17 168:25 170:18 196:17	recommendations 195:10	relationship 175:4 relationships 139:16
provider 158:16 169:20 177:11,11 177:17 178:13 187:14	questioning 157:4	readback 178:7	recompute 138:20	relative 201:10
providers 169:1,13 169:15,16,25 174:3,11,13	questions 144:20 146:7,8 148:17 151:15 156:25 157:5 160:11 166:25 167:1 168:23 170:19 174:2 198:14	reading 135:4 161:21 166:18	record 113:8 115:13 137:17 144:19 145:7 149:3 166:17 173:25 174:3 175:18 176:21 200:5	relatively 127:7,11 173:20,21
provides 128:2 148:12	quick 175:12	reads 119:10	recorded 190:25	release 154:21
providing 117:11 165:3,18 166:10	quickly 187:9 196:11	real 182:10	records 146:17,24 167:22	releases 135:6 153:10,22,25 155:1,6
provision 135:15 150:3,4,15,20,25 151:11 152:1,11 153:7,13,15,24	quiet 173:20	really 114:9 124:16 124:18 130:1,16 132:9 136:19,23 138:2,6,7 163:11 163:11 178:10 186:5 193:2 194:22,24	reference 116:14 118:2,16 119:18 125:19,19 126:10 131:3,8 142:1,17 142:24 157:24 158:17,22 165:1 165:17 169:4,14 172:9 187:22	releasing 171:13
provisions 150:11	quit 171:14	reason 181:3	referenced 121:4 143:12	relevant 150:16
proximity 161:9	quite 121:11 136:16 149:11 169:24 174:10 178:18 194:2,15 197:23	reasonable 118:12 118:13 120:12 168:3 179:22	referred 153:4 165:19 189:24	relief 120:24
public 119:19 120:17,20 133:8 133:21,24 134:8 134:24 135:24 136:12 175:18 182:13 197:9 198:11 201:18	quo 129:5	recall 115:25 116:15 123:5 139:18 157:15 158:11 160:21 162:21 167:4 173:11 177:13 197:10 198:9	referring 115:22 116:9 127:12 137:12 140:24 144:2 146:13 180:15	remarks 125:8
publicize 188:17	quote 124:21 148:15 189:5	received 174:8	refresh 116:2	remember 123:20 139:19 143:21 157:17 163:7 197:11
publicly 119:14 122:15	R		regard 130:22 132:21 137:20	remind 113:18
pull 191:1	R 113:1			reminder 121:17 132:8 148:2
	R&R 115:3,5 118:4 119:11 121:9			ReminderTRAX 147:25 148:6
				remiss 121:9
				removed 129:3 165:14
				repair 186:24
				repeat 150:23
				rephrasing 166:16
				replace 191:14
				report 125:2 161:19 181:5,13 183:18 183:20 185:5
				Reported 110:25
				REPORTER 201:1
				reports 156:21 159:23 161:17 163:3,4 164:9

165:9 186:7,8 188:1,7 191:4 192:25 193:25 represented 118:24 Request 188:25 requested 166:17 required 144:10 requires 165:10 resolved 160:20 respect 118:16 respects 140:1 response 115:10 116:17 145:21 157:22 158:20 188:13 responsible 145:10 responsive 115:15 rest 132:10 186:12 restrict 184:19 restriction 142:20 result 173:16 183:20 results 188:5 resume 113:3 return 149:17 Reversal 191:6 review 154:1,20 195:2 196:24 Reviewing 137:6 150:18 Revised 156:6 REYCID0046837 155:25 REYCID0186518 188:23 REYCID0186574 185:1 REYCID0264663 125:7 REYCID0265394 192:5 REYCID0513201 130:13 REYCID0577749 180:7 REYCID0675485 167:2 REYCID0675646	137:1 Reynolds 110:7,7 111:13,13 112:13 113:21 114:2,8 115:9 118:1,2 123:1,13 125:20 126:16 130:22 131:22,23,25 133:7,8 134:7 135:6,15 136:11 137:2,3,21 138:25 139:22 140:11,23 141:16,24 143:11 143:14,17,20 144:3,17,25 145:11 146:22 148:16,22 149:25 150:5,10,17 151:9 152:9,18 155:1,15 155:16 156:13 157:23 158:9,9,22 158:24 159:3,4 162:23,23 164:16 165:2 166:9 167:15,19 170:25 171:1,2,3 179:18 182:7,22 184:8 185:7,8 192:17 193:24 194:4,9 197:13 198:2 Reynolds' 113:25 114:7 125:24 131:9 143:2 152:15 164:24 171:17 182:2 Reynolds-brand 141:13,22 REYREY0000012 145:3 REYREY0000025 145:3 REYREY0000091 145:2 Richter 110:13 111:16 right 116:11,24,24 136:9 161:18	163:14 178:4,5,10 188:11 193:5,11 194:24 198:3 199:25 right-hand 157:9 rights 139:1 181:7 ring 197:24 risk 184:3,5 Robert 110:21 113:10 195:20 rocks 129:10 134:9 role 145:7 Roman 141:6 room 113:7 RPR 110:25 201:17 run 163:3 168:15 181:13,14 186:16 186:23 188:3,7,8,9 189:11 running 120:10 181:15,16 runs 146:17 153:19 181:5 <hr/> S S 113:1 S-Y-S-C-H-E-C-K 185:16 safeguarding 145:22 safest 169:21 sales 114:13 125:9 127:20 129:11 137:13 155:16 180:11,14 182:23 183:4,6 189:3,4,5 194:19 salespeople 128:17 129:7 saw 157:18 saying 121:23 123:6 127:22 166:7 170:22 189:16 190:3 195:5 196:17 says 115:2 118:16 118:19 121:8	125:17 131:22 132:19 135:5 143:10 148:12 157:25 158:1,1,1 158:15 162:16 165:2,5 169:12,16 177:4 181:18 184:3,8 187:19 189:22 191:12 193:18 196:4,9 199:1 scale 121:16 scenario 157:10 162:16 164:12 Schaefer 125:4 130:14 133:14,20 134:1 135:23 136:10,14 140:14 145:12 146:3,5 156:2 159:23 160:10 161:10,19 161:22,24 162:4 185:3 188:24 189:21 193:25 195:10,20 198:8 schedule 178:23,23 179:5 scheduled 160:10 school 183:8,10 SCOTT 111:24 scratch 120:9,25 scream 181:18 screen 146:19 187:19 second 115:14,23 119:5 125:12,16 148:11 150:8 151:4 158:18,19 168:25 170:2 183:24 192:11 193:17 second-to-last 119:9 121:8 171:7 section 127:2 146:10 148:14 198:21 secure 184:17 191:23,24	securely 184:9 securing 170:4,5,11 security 113:22,24 114:16 119:1 124:17 125:14 126:24 127:2 130:8 134:9 142:22,23 167:16 167:17,19 168:3 169:19 171:4,4,12 171:15 172:2,8,21 172:22 173:6,17 173:22 180:23 182:24 184:15 192:18 198:4 see 115:20 116:22 120:6 121:21 125:14 127:1,4 133:22 150:3,13 151:3,24 152:23 154:2 158:21 167:13 177:22 178:8 182:21 184:3 196:6,14 198:22 199:4 seeing 120:4 123:12 167:4 seek 153:9 176:20 seeking 175:12 seen 119:2 127:25 140:6 156:10 157:1 166:21,22 167:3 168:23 177:5 180:17 sell 141:19 175:14 selling 138:13 191:21 send 155:5,16 163:13,20 169:8 182:22 senior 180:10 183:6 sense 134:7 sensitive 132:23,24 178:19 197:11 sent 130:4 148:2 155:2 183:4 sentence 115:17,23
---	---	--	--	---

116:20,22 118:3 118:19,21 119:3,7 119:9 121:8 129:15 131:4,4,6 131:20 132:18 133:15 141:7,9,18 142:18 143:10 148:25 149:6,23 149:24,25 151:5 153:18,19 157:25 167:15 168:24,25 169:12 170:3 171:7 172:10 180:24 184:2 185:16 187:22 189:22,24 191:11 193:17 196:9 199:1 sentences 119:8 121:7,13 separate 146:15 178:1 185:23 194:16 September 110:11 130:15 195:19 serial 182:18 series 150:9 183:25 192:7 serious 143:3 173:12 176:1,4 Served 147:14 service 121:16 147:17 148:1,1,4 177:24 186:24,25 188:15 191:21 services 162:23 164:19 165:17,18 165:22 166:8 193:22 serving 174:24 session 200:5 set 117:12 142:19 163:8 169:7 181:13,16 185:25 199:2 settle 139:8,10,15 settled 126:4	settlement 112:11 126:8 137:2,5,7,11 138:4,8 140:21 143:18 198:18 seven 177:1 186:22 shake 175:25 shaky 188:9 share 152:3 shattering 145:24 Sheppard 110:13 111:16 short 177:19 180:13 show 144:15 153:11 155:22,23 188:21 showing 153:2 shown 137:8 shows 164:23 shut 139:2,4 179:12 188:1 shutting 179:11 sic 131:6 side 116:24 sigh 120:24 sight 193:20 sign 121:18 177:4 signed 130:23 148:6 154:17 159:12,14 160:6 163:16 170:24 176:8 182:25 significant 139:20 signing 160:19 similar 125:18,18 126:2 142:13 simple 168:2 simultaneously 186:1,2 single 168:12 sir 162:14 SIS 126:22 131:7,8 131:11,14,23,25 132:3 137:16,17 137:20 138:1 139:22 140:11,21 140:22 141:9,18 144:4 173:3 198:18,22 199:7	199:13,14 sit 161:3 sites 125:24 sitting 154:15 166:18 situation 120:7 123:3 130:1 136:8 140:4 164:18 179:21,23 180:1 190:20 193:8 194:2 situations 114:14 135:12 six 177:1 186:12,22 191:3 skip 153:23 Skype 161:13,23 162:1 slightest 133:4 small 121:16 130:16 163:11 smart 142:8 187:7 smarter 140:3 snake 131:15 138:5 138:5 143:4 soft 118:12 software 166:2,4 168:11,17 183:15 185:4,11 Solutions 137:4,18 somebody 163:6 165:11 168:14 172:13,22,23 181:22 186:10 somewhat 114:23 sophisticated 140:5 166:3 194:12 sorry 114:24 116:23 123:5 139:19 142:22 145:18 147:11 149:1,5,10 149:13 150:22 155:3,7,12,17 158:11 164:7 187:19 sort 128:17 148:5 156:25 160:3	177:20 183:2 189:12 197:25 199:12 sought 143:17 sound 128:17 speaking 140:20 174:19 special 178:13 specializes 189:2 specific 152:11 158:2 189:17 specifically 140:2 157:15 189:14 specified 169:10 spend 124:21 183:20 spinmeisters 133:18 spoke 176:5 spoken 153:7 176:17 staff 182:23 183:4 staffs 194:15 stage 122:22 136:8 162:7 stages 125:17 160:12 stance 134:9 184:11 stand 118:10 125:25 126:20 139:5 162:20 171:10,19 171:19,20 173:4,5 standard 152:10 190:10 standardization 165:16 standards 119:12 standpoint 119:1 124:17 128:5 129:22 139:9,14 140:13 142:10 161:17 168:4 177:25 181:4,9 183:16 stands 139:7 193:22 staring 154:16 start 120:25 128:13 149:17 164:8	181:24 183:12 started 122:15 123:20 128:4 138:13 starting 128:15 146:21 148:17 150:11 starts 116:21 117:8 130:19 131:1 198:21 state 130:7 145:7 stated 133:23 164:21 statement 124:18 128:10 136:12 137:12 150:4 157:19 197:19,21 199:12 statements 119:20 states 115:18 126:25 141:18 142:18 170:3 192:11 stating 142:25 149:25 status 129:5 138:11 steadily 195:8 stereotype 201:5 Steve 122:24 stock 175:9,13,14 Stone 188:25 189:1 189:2,8,22,25 191:14,14,15 192:11,15,22 stones 129:12 stop 122:6 123:14 126:15 134:21 154:7 stopped 123:13 176:13 stopping 122:19 straw 143:22,23 144:6 stricter 122:11 strictly 151:6 strongly 135:16,24 136:15 structured 128:1
---	---	---	---	--

stuff 138:23 190:8 192:22 stupid 124:17 Subaru 137:23,25 140:23,24 141:1 Subaru-specific 138:1 subject 129:13 131:11 146:5 156:5,23 157:14 164:15 180:8 188:25 subjects 130:21 180:22 subparagraph 131:2 148:25 149:8,20 subparts 148:15 subset 165:18 substantially 156:18 subtitle 137:2 successful 154:14 suck 186:22 sudden 181:24 suggest 122:9 suggesting 122:6 Suite 111:18 summer 194:25 superior 137:3,17 142:9 supervision 201:6 supply 186:18 supposed 147:11 165:8,12 172:11 172:15 179:6 183:17 193:19 sure 114:11 115:25 119:10 128:15 131:13 133:25 144:22 149:11 157:7 162:5 173:23 174:10 175:15 176:21 197:23 surprised 124:15 131:19 132:15 161:6	surrounding 115:18 suspect 117:19 suspends 187:7 switch 114:5 179:10 sworn 113:12 Syscheck 185:17 187:2,3,17,21 system 114:3,4,8 115:10 119:18,22 121:10 122:7,13 122:20 123:14,16 124:11,11,13 128:2,6 129:3 132:6 134:21 137:21,24 138:2,8 138:16 139:25 140:23 150:2,6,17 151:9 152:21 164:17 167:18,22 171:1 181:21 184:20,22 185:19 185:21,22,23,24 187:14,18 193:12 199:15 systems 115:4,5 121:25 127:19 128:4 141:25 143:2 152:15,15 154:8 164:24 183:15 192:13 197:22,23 T tack 198:3 tactical 130:20 take 114:18,19 116:18 119:3 120:20,21 122:11 124:9 125:5,11 126:1 129:12 130:12 136:25 140:15 141:5 146:6 150:8,19 151:14 155:24,25 161:2 162:11 167:1,9 179:17 180:6 184:25	186:18 188:22 192:4 198:3 taken 124:3 140:18 155:20 177:7 179:19 188:19 201:5,9 takes 176:2 talk 162:24 167:16 194:25 195:14 talked 117:11,16 123:11 127:16 129:15 130:3 133:25 164:25 167:15 175:21 177:15 190:14 196:8 talking 113:20 114:24 116:6 117:20,24 119:5 124:5 127:9 129:7 131:5 147:24 153:12 154:21 169:18 171:24 177:9 180:22 182:23 193:3,19 194:7 196:2,9 talks 118:1,17 125:16 132:17 164:12 165:15 180:21 184:1 tat 135:8 teach 152:14 technical 133:1 140:12 185:19 technically 124:24 technique 144:4 technologically 139:23 142:8 technology 141:21 142:2,4,9 telephone 115:24 116:1,7,12 123:4 124:6,7 161:25 175:22 telephones 197:24 tell 114:4 128:14 132:2 140:2 147:8	195:17 telling 129:13 192:21 198:16 ten 148:25 149:7,20 162:8 173:24 177:1 tendered 153:25 term 189:6 terminal 186:10,23 terminal-based 186:9 terms 122:12 126:15 134:16 152:11 160:16 189:9 terrycloth 161:1,5 tested 117:13 179:6 testified 113:12 testifying 133:24 testimony 110:19 196:16 200:1 Thank 145:20 195:24 199:23 theoretical 182:9 theoretically 186:20 theory 183:21 thing 116:24 134:11 136:3,17 139:5 142:13 148:5 155:17 168:3 188:3 189:12 191:6 198:1 things 114:13 118:11 142:14 159:24 163:8 167:23 176:19 177:19 180:20 183:17 192:2 193:9 194:3 198:6 think 115:6,18 119:12 122:21 123:18,22 128:4 131:13 132:9 134:10,22 136:1 136:14,20,23 137:23 138:15 139:6,20 141:14 142:15,25 149:16	157:15 163:1,10 164:21 165:5,25 166:3 167:14 169:9 173:12 183:1 186:16 187:25 193:19 197:1,15 thinking 128:22 136:2 154:23 155:13 198:5,6 third 114:7 118:4,5 118:18,20,23 119:17 120:17 122:10,12 124:12 126:24 127:3 130:4 134:5 141:20 142:1,2,5 142:11 146:11 151:12 163:5,10 164:10,23 165:10 165:15 166:7 167:8,17 171:24 181:6 189:2 192:12 third-party 119:6 120:21 122:19 123:8,13,15 124:10 132:11 140:22 153:1 162:17,18 164:13 164:14 166:12 168:7 170:14 184:20 Thornhill 156:1 thoroughly 117:13 thought 114:9 118:13 120:23 122:21 124:16 133:4,20 135:17 136:22 138:4 143:4 152:22 153:10 three 144:15,16 150:9 153:20 158:12 177:1 180:8 throw 129:10
--	---	---	---	--

throwing 114:12 134:9 179:10	151:22	ultimately 126:4 130:22 175:14	151:6 152:13 156:24 161:22,23	wait 186:25 187:12 188:17
thrust 152:16	164:10 181:22	Um-hum 196:15	164:19 166:25	wake 169:7
Thursday 110:11	transmitting 165:10	unanimous 135:13	168:16 174:7	walk 161:2
time 116:13 117:21 117:21 121:11,22	182:16	unattended 180:24 181:3,11,13,16	179:14 180:19	want 131:17 133:8 133:10 134:12,12
124:21 126:18	travel 176:25	182:2,5,15 184:4	184:19 189:6	134:20 135:9
138:6 142:7	treacherous 129:23	unauthorized	user 137:25 167:22	139:10 149:7
144:17,18 153:12	tremendous 182:19	134:21	167:25 168:7,10	163:19 188:2,8
154:19,25 155:9	tried 143:19	underlined 167:11	168:12,13,15	189:10 190:5,7 198:11
158:5 159:17	trigger 175:12 186:18	170:5,18	185:23	wanted 113:24 125:11 135:6
160:6,17 161:14	trouble 171:21	understand 113:19	users 171:8 186:1,4	136:11,17 137:25
162:2 166:22	true 131:16 174:22	118:21 122:2	186:22 187:8,13	143:13 144:8
169:17 173:18	truly 122:2	128:3 141:3	uses 178:4 180:23	155:10 159:14
174:5,11 182:14	truth 188:18	149:15 150:3	186:10	163:12,17 174:7
183:2,3,20 185:12	truthful 197:18,20 197:21	151:24 157:2	Utilized 146:11	191:23 197:1,2,3 199:11
188:2,9,13 190:2	try 157:3 184:23	165:24 173:3,7	<hr/> V <hr/>	wanting 187:17
192:16,17 199:13	trying 129:8 142:6 142:11 182:4	184:23 189:13,14	v 141:6,7 143:2 144:12 198:21,21	wants 130:19 164:23 189:9
timeline 159:20	turn 121:7 124:22	understanding	valid 168:1	warranties 138:22
timeout 124:2	149:6 151:12	118:25 125:7	valuations 175:13	warranty 178:7,9
times 161:4 179:9	157:8 167:8	144:6 152:4	variance 129:5	wars 130:8
tingly 134:3	171:15 172:1	154:17,18 155:8	varied 162:6	Washington 110:15 111:9,19
tit 135:8	175:12 187:16	159:2,12 163:14	various 144:20 156:15	wasn't 122:15,18 124:15 136:6
titled 125:13 127:2	198:20	163:20,23,25	vehicle 146:14	197:11 199:9
toast 161:3	turned 144:9	165:21 175:8	147:22 178:6,8	watch 163:8
today 113:3,7 160:2 166:18,22 174:19	turns 181:5 191:2	understands 183:14 183:16	182:10,11,16	watching 124:21
175:14 189:23	twice 118:17	understood 153:14	189:3,4	water 115:7
196:3,9 199:10	two 119:8 121:7,13 135:12 150:11	166:19 177:6	vehicles 121:18	waterfront 161:15
today's 200:4	162:8 164:6	196:11	146:12 148:3	way 113:22 114:4,13 120:22 124:16
told 127:20	167:10 168:11	undertakes 177:21	vendor 148:12	125:25 126:17,21
Tommy 185:2 192:20	174:2 175:5 177:1	undertakings	149:8 162:17	127:18 134:22
top 147:24 150:24	179:9 180:22	156:13	164:13,14,15,18	135:1 138:17
153:24 162:12,13	198:14 200:2	unfamiliar 166:21	165:3 166:10	139:22,23 141:3
185:14 192:7,10	two-page 114:20	unfavorable 134:14 134:15	vendors 162:18	141:25 143:1
192:10 193:18	type 144:4 178:5	Unfortunately	verdict 126:9	152:23 156:25
topic 123:3	types 195:6	138:5 159:20	versus 137:3	166:20 167:16,20
touched 138:14	typewriting 201:6	unhappiness 161:4 171:21	veteran 174:23,24	169:2,21 172:21
tough 188:8	typically 128:12 149:14 161:13	unmannerly 183:13	vice 180:10,14	179:25 185:25
Trade 110:1 111:3,7 113:5	169:6	unpleasant 140:8	view 140:3	191:15 197:12,16
transaction 187:10 189:7,7	<hr/> U <hr/>	unwound 190:24	vindicated 114:15	ways 123:24
transaction-based	UCS 185:7	update 171:4,4 172:2	violated 139:1	
188:11	UCSer 185:9	usage 186:8 187:4	vision 121:21	
transfer 141:20		use 122:19 150:1	VP 183:6 185:4	
			<hr/> W <hr/>	

we'll 144:17,18,21 146:8 173:23 177:23 194:24,25 we're 194:24 we've 114:19 125:6 127:25 138:5 141:14 155:23 167:14 180:10 188:21 190:9 191:5,13 194:3,4 195:9 199:15 wearing 193:15 Web 147:10,16 website 147:18 182:12 websites 182:11 week 115:19 162:8 165:12 181:14 weekends 179:5 weeks 162:9 Wehr 110:25 201:4 201:17 weigh 194:19 well-developed 120:4 went 138:9 175:21 179:21 197:5 weren't 120:25 wet 134:3 widely 188:18 widespread 184:14 wife's 161:4 wildly 138:24 William 111:5 113:5 WILLIAMS 111:6 wind 126:12 131:12 136:3 139:11 198:22 winterizing 148:4 witness 113:11 116:6 124:2 166:18 200:3 word 119:13 149:16 185:15 words 119:4 121:23 132:16 145:5 174:18 190:24	work 136:7 172:3 179:4 183:17 188:16 194:16 worked 161:9 185:10 194:5 working 156:21 185:7 works 160:25 163:6 168:19 190:8 world 129:14 134:23 135:1 186:15 worse 192:21 worst 120:7 190:12 worthwhile 178:15 wouldn't 122:14 132:15 134:20 195:13 wrapper 137:24 write 131:21 168:24 writes 180:11 writing 133:14 written 153:21 wrong 117:3 130:5 181:8 184:6 188:10 wrote 120:6 143:2 X X 112:1 Y yeah 126:20 139:13 142:22 147:22 152:23 193:25 194:24 195:8 year 139:7 years 115:9 135:1 158:12,13,13 174:25 185:10 190:17 193:20 197:22 yep 156:21,21 yesterday 113:6,8 113:20 114:1 115:24 116:1 130:4 174:19	177:9 Z 0 001 117:1 003 141:5 007 137:8 1 1 146:10 168:25 192:6 1.8 150:12 1:08 200:7 100 111:18 185:22 185:25 186:4 192:12 100,000 121:19 11 130:15 195:19 11/2016 112:19 11/21/16 112:18 113 112:4 114 112:8 1143 112:8 114:19 114:20 115:13 116:18,25 117:22 124:5 125 112:9 13 151:18 130 112:10 136 112:11 14 125:9 137:13 144 112:12,13,14 15 189:21 155 112:15 15th 158:12 16 161:17 167 112:16 171-0056 110:6 18 159:13 180 112:17 185 112:18 188 112:19 19 110:11 192 112:20 1975 124:20	2 2 147:9,14 148:14 2.5.3 150:21,25 151:1 2/26/15 112:15 20006 110:15 111:19 2014 115:16 125:9 130:15 137:10,13 143:19 160:4 195:19 2015 130:23 131:7 154:19 156:2 158:5 159:11,13 159:17 160:5 167:7 169:17 173:17 174:5,12 183:3 2016 185:2 188:24 189:21 2017 192:6 2018 154:17 2019 110:11 202 111:10,20 20580 111:9 2099 110:14 111:17 21 185:2 26 156:2 159:11 3 3 147:23 3(a)(v) 199:3 3.A.v 142:18 3/19/15 112:17 30 115:16 30th 116:13 326-3695 111:10 37-year 174:23 3PA 112:12 117:15 117:17,23 118:6 118:14 119:22 122:16 125:2 127:8,23,24,25 128:2,7,21 129:4 129:19 132:12 144:24 146:23,25	147:5,20 148:7 184:13 3PA-B 148:14 4 4 130:18 151:18 196:6 4.2 152:25 153:4,18 4.5 151:16,21 4036 112:9 125:6,6 137:12 4036-002 125:12 126:25 4037 112:10 130:12 130:13 195:16 4038 112:17 180:7,7 4038-002 183:25 4043 116:3,4,10 4045 112:14 144:23 145:3 151:13 4045-003 152:25 4045-004 151:17 153:24 4152 112:12 144:24 145:2 146:6 4152-001 148:11 4152-004 148:20 4152-016 146:7,22 4152-017 147:9,13 4152-018 147:23 4153 112:13 144:25 145:2 150:9 4153-002 150:12 4153-006 150:20,24 4176 112:15 155:23 155:24 156:1,5 162:11 4176-004 157:8 4176-005 162:12 164:12 4182 112:16 167:2,2 4182-003 167:9 168:24 4273 112:11 136:25 137:1,8 140:21 141:6 198:15 4273-003 198:20
---	---	---	--	---

CDK Global & Reynolds and Reynolds

9/19/2019

[219]

4420 112:19 188:22
188:22 191:12
4459 112:18 185:1,1
185:15
4463 112:20 192:4,5
192:11
45 123:24
48 185:10
49 174:25 185:10
4C 132:16

5

5 198:21
50 187:5
50,000-mile 148:4
5th 137:10

6

60 175:8
600 111:8
6240's 180:9

7

7/14/14 112:9
7/2/14 112:8
747-1958 111:20

8

8/1/17 112:20
85 184:10 187:5,7

9

9/11/14 112:10
9:05 110:18
90 187:5,7,8